Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-773

SCOTT HUDGENS, AN INDIVIDUAL,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

LOCAL 315, RETAIL AND WHOLESALE DEPARTMENT STORE UNION, AFL-CIO,
Intervenor.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITION FOR CERTIORARI FILED DECEMBER 20, 1974
CERTIORARI GRANTED MARCH 17, 1975.

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APPENDIX

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Scott Hudgens, an Individual

Case No.: 10-CA-8823

1/25/71	Charge filed.
2/24/71	Complaint and Notice of Hearing, dated.
3/ 4/71	Petitioner's Answer to Complaint, dated.
3/24/71	Motion to Transfer Case to the Board, dated.
3/24/71	Stipulation entered into by all parties, dated.
3/25/71	Regional Director's Order Postponing Hearing Indefinitely, dated.
3/30/71	Board's Order Granting Motion, Approving Stipulation and Transferring Proceeding to Itself, dated.
8/16/71	Decision and Order issued by the National Labor Relations Board, dated.
9/17/71	Union's Motion in Opposition to Petitioner's Motion for the Board to Reconsider its Decision and Order, received.
10/ 1/71	Petitioner's Motion for Reconsideration, received.
10/12/71	General Counsel's telegram opposing Petitioner's Motion for Reconsideration, received.
10/19/71	Board's Order Denying Motions, dated.
10/21/71	Petition for Review filed by Petitioner.
7/17/72	Court of Appeals remands for reconsideration.
9/13/72	Petitioner's Motion to Remand to an Administrative Law Judge, dated.

9/28/72	Board's telegraphic order advising the Board will not rule on Motion to Remand until all parties have submitted statement of position, dated.
9/29/72	Petitioner's Offer of Proof in Support of Motion to Remand.
10/20/72	General Counsel's Statement of Position, received.
10/20/72	Petitioner's Statement of Position, received.
11/ 1/72	Petitioner's Reply to General Counsel's Statement of Position, received.
11/17/72	Order Remanding Proceeding to Administrative Law Judge, dated.
11/27/72	Notice of Hearing, dated.
12/ 7/72	Order Rescheduling Hearing, dated.
2/ 1/73	Hearing opened.
2/ 1/73	Hearing closed.
4/ 9/73	Administrative Law Judge's Decision, issued.
5/25/73	Petitioner's Exceptions to Administrative Law Judge's Decision, received.
8/21/73	Board's Supplemental Decision and Order, issued.
9/21/73	Petition to Review filed in Court of Appeals.
9/25/74	Decision of Court of Appeals Issues.
10/18/74	Judgment of Court of Appeals Issues.
11/11/74	Mandate Issues.
12/20/74	Petition for Writ of Certiorari filed.
3/17/75	Certiorari granted.

CHARGE AGAINST EMPLOYER

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

	Do Not Write in This Space
Instructions: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.	Case No. 10-CA-8823
	Date Filed 1-25-71

1. Employer Against Whom Charge Is Brought

a. Name of Employer: Scott Hudgens, an Individual

b. Number of Workers Employed: Approximately 50

c. Address of Establishment (Street and number, city, State, and ZIP code): P. O. Box 20767, Atlanta, Georgia 30320

d. Employer Representative to Contact: Dock H. Davis, Attorney at Law

e. Phone No. 762-9663

f. Type of Establishment (Factory, mine, wholesaler, etc.): Realtor

g. Identify Principal Product or Service: Leasing and renting space in shopping centers

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsection (1) and ..... (List subsections)

of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basic of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

The above named Scott Hudgens, did on or about January 22, 1971, at the North DeKalb Shopping Center, DeKalb County, Georgia, interfere with, restrain and coerce the employees of Butler's Shoe Corp. in the exercise of their rights as guaranteed under Section 7 of the Act, as amended.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge, (If labor organization, give full name, including local name and number)

Local 315, Retail, Wholesale & Department Store Union, AFL-CIO

4a. Address (Street and number, city, State, and ZIP code)
1838 Stewart Ave., S. E. Atlanta, Georgia 30315

4b. Telephone No. 758-6865

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

American Federation of Labor and Congress of Industrial Organizations

6. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Morgan C. Stanford Attorney
(Signature of representative or person filing charge) (Title, if any)

Address 6th Floor—Rhodes-Haverly Bldg.
Atlanta, George 30303 523-2825 January 22, 1971
(Telephone number) (Date)

Wilfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 1001).

BEFORE THE NATIONAL LABOR RELATIONS BOARD

* * (Caption—10-CA-8823) * *

COMPLAINT AND NOTICE OF HEARING

It having been charged by Local 315, Retail, Wholesale & Department Store Union, AFL-CIO, herein called the Union, that Scott Hudgens, an Individual, herein called Respondent, has engaged in, and is engaging in, unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U. S. C. Sec. 151, *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director, issues this Complaint and Notice of Hearing Pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended.

1

A copy of the charge, filed on January 25, 1971, was served upon Respondent by registered mail on January 25, 1971.

2

Respondent is, and has been at all times material herein, an individual employer, with an office and place of business located at Atlanta, Georgia, where he is engaged in the selling and leasing of real estate and the development of property in the State of Georgia.

3

Respondent, during the past calendar year, which period is representative of all times material herein, received gross revenue in excess of $100,000 from leases for floor space with tenants in the North DeKalb Shopping Center, Decatur, Georgia. During this same period and pursuant to the aforesaid leases,

6

Respondent received gross revenue in excess of $25,000 from tenants, including F. W. Woolworth Company, Butler Shoe Company and Rich's Inc., each of whom annually has a gross volume of business in excess of $500,000 and purchases and receives products valued in excess of $50,000 directly from suppliers located outside the State of Georgia.

4

Respondent is, and has been at all times material herein, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

5

The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

6

General Manager, Douglas C. Ballard, is, and has been at all times material herein, a supervisor within the meaning of Section 2(11) of the Act and an agent of Respondent.

7

Respondent, by its supervisor and agent, General Manager Douglas C. Ballard, on or about January 22, 1971, in and about the vicinity of Respondent's North DeKalb Shopping Center, threatened employees of Butler Shoe Company with arrest if they engaged in, or continued to engage in, picketing on behalf of the Union at the shopping center.

8

The acts of Respondent alleged in paragraph 7 above constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

7

Please Take Notice on the 31st day of March, 1971, at 10:00 a.m., Eastern Standard Time, in Room 710, 730 Peachtree Street, N. E., Atlanta, Georgia, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Summary of Standard Procedures in Formal Hearings held before the National Labor Relations Board in Unfair Labor Practice Cases as taken from the Board's published Rules and Regulations and Statements of Procedure, is attached.

You are Further Notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and 4 copies of an answer to said complaint within 10 days from the service thereof and that unless it does so all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board.

Dated at Atlanta, Georgia, this 24th day of February, 1971.

/s/ WALTER C. PHILLIPS
Walter C. Phillips
Regional Director
National Labor Relations Board
Room 701, 730 Peachtree Street, N. E.
Atlanta, Georgia 30308

BEFORE THE NATIONAL LABOR RELATIONS BOARD

* * (Caption—10-CA-8823) * *

ANSWER OF RESPONDENT

In response to the Union's Complaint, Respondent answers as follows:

1

Respondent admits the allegations contained in Paragraph One.

2

Respondent admits the allegations contained in Paragraph Two.

3

Respondent admits the allegations contained in Paragraph Three, except that it denies that it has received any gross revenue from Rich's, Inc.

4

Respondent admits the allegation contained in Paragraph Four.

5

Due to lack of information and belief, the respondent neither admits nor denies the allegations contained in Paragraph Five.

6

Respondent admits the allegations contained in Paragraph Six.

7

Respondent denies the allegations of Paragraph Seven, except that Respondent does admit that General Manager, Douglas C. Ballard threatened to call the police if the picketers did

not cease picketing within the enclosed mall at the shopping center.

8

Respondent denies the allegations contained in Paragraph Eight.

Dated at Atlanta, Georgia, this 4th day of March, 1971.

Respectfully submitted,

DOCK H. DAVIS
Attorney of Law
Scott Hudgens Building, 3rd Floor
P. O. Box 45031—Atlanta, Georgia 30320
Phone—762-8663

BEFORE THE NATIONAL LABOR RELATIONS BOARD

* * (Caption—10-CA-8823) * *

STIPULATION

It Is Hereby Stipulated and Agreed by and among Scott Hudgens, an individual (herein called Respondent), Local 315, Retail, Wholesale, & Department Store Union, AFL-CIO (herein called Union), and the Counsel for the General Counsel of the National Labor Relations Board (herein called the Board), that:

1

The General Counsel of the Board, by the Regional Director for the Tenth Region, acting pursuant to authority granted in Section 10(b) of the National Labor Relations Act, as amended, 29 U. S. C. Sec. 151, *et seq.* (herein called the Act), and pursuant to Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, issued a Complaint and Notice of Hearing dated February 24, 1971, against Respondent upon charges filed January 25, 1971. True copy of said charge was served upon Respondent by registered mail on January 25, 1971. True copies of said Complaint and Notices of Hearing were served by registered mail upon Respondent and upon Union, the Charging Party herein.

2

Respondent is, and has been at all times material herein, an individual employer, with an office and place of business located at Atlanta, Georgia, where it is engaged in the selling and leasing of real estate and the development of property in the State of Georgia.

3

Respondent, during the past calendar year, which period is representative of all times material herein, received gross revenue

in excess of $100,000 from leases for floor space with tenants in the North DeKalb Shopping Center, Decatur, Georgia. During this same period and pursuant to the aforesaid leases, Respondent received gross revenue in excess of $25,000 from tenants, including F. W. Woolworth Company and Butler Shoe Company, some of whom annually have a gross volume of business in excess of $500,000 and purchase and receive products valued in excess of $50,000 directly from suppliers located outside the State of Georgia.

4

Respondent is, and has been at all times material herein, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

5

The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

6

General Manager, Douglas C. Ballard, is, and has been at all times material herein, a supervisor within the meaning of Section 2(11) of the Act and an agent of the Respondent.

7

The North DeKalb Shopping Center is located at Lawrenceville Highway and North Druid Hills Road in DeKalb County, Georgia. There are three entrance roads into the center, one from Lawrenceville Highway and two from North Druid Hills Road. There are approximately 60 stores in the center. The shopping center complex has an enclosed mall with four entrances approximately 20 feet in width with six or eight swinging doors on each. Some of the stores at the center have entrances only to the parking lot and cannot be reached via the enclosed mall, others have entrances only from the enclosed mall and cannot be reached directly from the parking area, while a few stores

have entrances from the enclosed mall and from the parking area. Butler Shoe Company's retail store can be entered only from the enclosed mall. Eighty-five to ninety percent of the customers who shop at those stores which have entrances only from the mall enter the shopping center complex through one of the four primary entrances.

Between the shopping center complex and the entrances from North Druid Hills Road and Lawrenceville Highways there is a parking area with parking spaces and driveways lined off thereon. The shopping center complex is completely surrounded by its parking facilities. A diagram showing the Butler Shoe Store in the Mall and the position where the picketing occurred is attached hereto as Exhibit 1. Exhibit 2, also attached hereto, is a diagram showing the arrangement of the enclosed mall and the retail stores.

8

On or about January 22, 1971, at about 9:30 a.m., four employees of Butler Shoe Warehouse located at 204 Brookwood Drive, N. E. Atlanta, Georgia, appeared in the North DeKalb Shopping Center Mall with picket signs reading "Butler Shoe Warehouse on Strike, AFL-CIO, Local 315." These pickets were sitting on a bench, inside the mall area, near the Butler Shoe Store waiting for the store to open. Respondent's General Manager, Douglas C. Ballard, approached the pickets and told them that picketing was not permitted in the enclosed mall and, if they did not leave, they would be arrested. The pickets left but returned within the hour and began picketing in front of the entrances to the Butler Shoe Store in the mall corridors with their picket signs. Picketing continued for about 30 minutes when a picket was called to a phone and talked with Manager Ballard. According to the picket, Ballard said that they would have to leave and if they did not stop picketing he would have the police out there in 30 minutes and have them locked up. Copy of picket's statement (Roger L. Long) attached hereto as Exhibit 3. According to Ballard, he does not recall telling the

picket on the phone that he would have them arrested. Copy of Ballard's statement is attached hereto as Exhibit 4.

9

Also, on January 22, 1971, Morgan C. Stanford, attorney for the Charging Party, after he was advised that the shopping center had ordered the pickets to cease their picketing in front of Butler's Shoe Store, telephoned Dock H. Davis, attorney for Scott Hudgens. Stanford stated to Davis that in his opinion the Union had a right to picket inside the enclosed mall and that he would have to check with the Union before he could advise them to discontinue their picketing activity. Davis stated to Stanford that the pickets could not be permitted within the enclosed mall and that if they did not leave, after being requested to do so, the Lessor would call the DeKalb County Police and obtain warrants for their arrest for criminal trespass if they continued to refuse to leave the enclosed mall.

10

This Stipulation, together with the Charge, Complaint and Notice of Hearing, Answer of Respondent, and Order Indefinitely Postponing Hearing will constitute the entire record herein.

11

In order to effectuate the purposes of the Act and to avoid unnecessary costs and delay, the parties hereto expressly waive a hearing before a Trial Examiner, the making of findings of fact and conclusions of law by a Trial Examiner, and the issuance of a Trial Examiner's Decision; and agree that, in lieu thereof, this case shall proceed and be transmitted directly to the Board in Washington, D. C., for findings of fact, conclusions of law, and the entry of an appropriate Order by the Board pursuant to the provisions of the Act, and further agree that this Stipulation and the entire record herein as set forth in Paragraph 10 above shall be filed with the Board in Washington, D. C., and that the

Board may proceed to make such findings of fact, conclusions of law, and enter such order pursuant to the provisions of the Act based upon this Stipulation and the entire record herein, without further notice. The parties expressly waive all further hearings, taking of testimony, submission of evidence, oral argument, filing of exceptions, or other procedure before the Board and any member thereof; provided, however, that the parties may file briefs with the Board on or before May 10, 1971, or within such time as the Board may provide.

12

This Stipulation contains the entire agreement of the parties, there being no other agreement of any kind, verbal or otherwise, express or implied, which varies, alters, or adds to this Stipulation; provided, however, that this Stipulation is made without prejudice to any objection that any party may have as to the relevancy, materiality, or competency of any facts stated herein.

In Witness Whereof the undersigned have hereunto set our hands on the dates and at the place written opposite our respective names.

Scott Hudgens, an Individual
By /s/ DOCK H. DAVIS
Attorney at Law

Signed this 24th day of March, 1972 at Atlanta, Georgia.

LOCAL 315, RETAIL, WHOLESALE & DEPARTMENT STORE UNION, CIO
By /s/ MORGAN C. STANFORD
Attorney

Signed this 24th day of March, 1971 at Atlanta, Georgia.

Counsel for The General Counsel
By /s/ SILVIA L. MASCOTTI
Attorney

Signed this 24th day of March, 1971 at Atlanta, Georgia.

Exhibit 1 to Stipulation

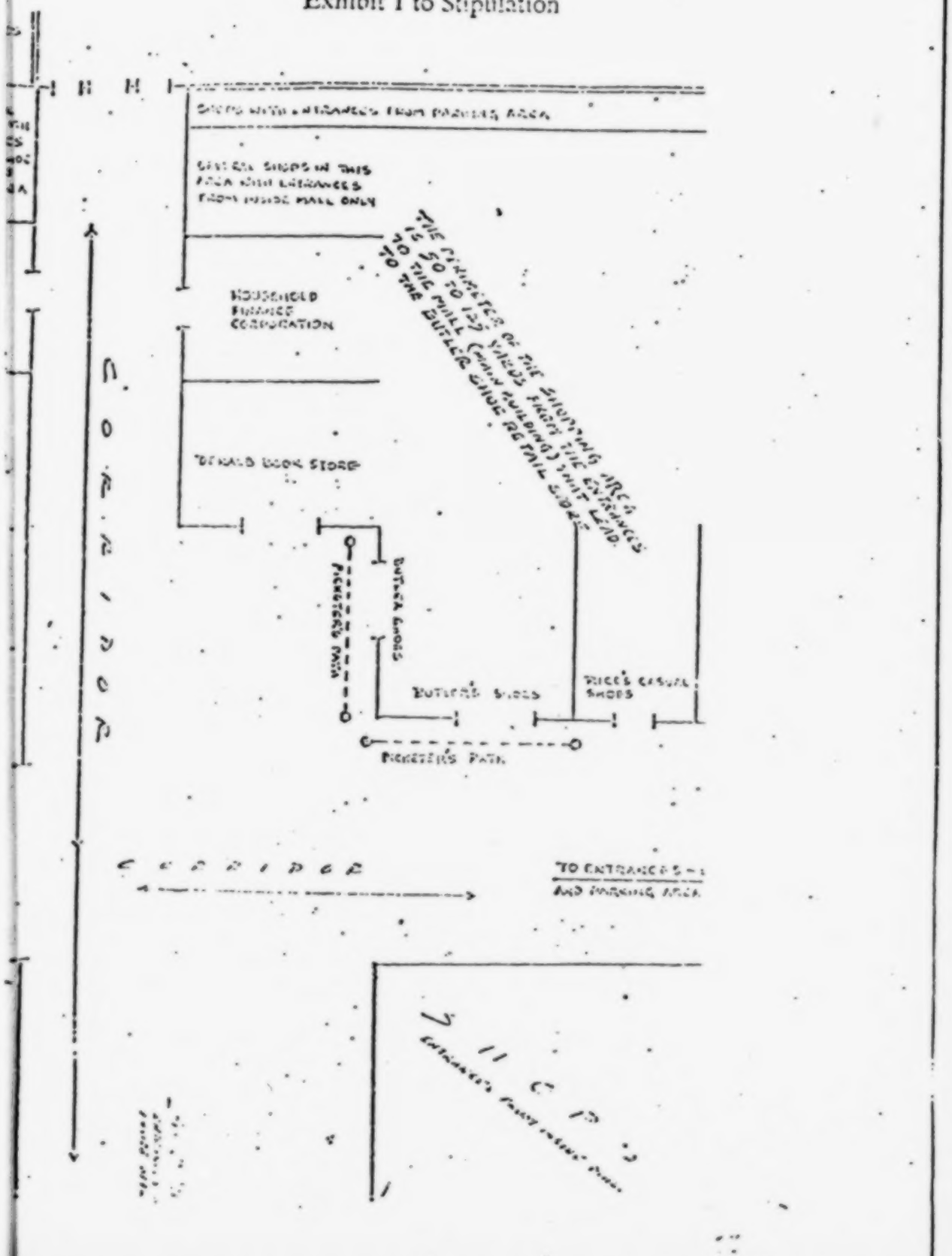
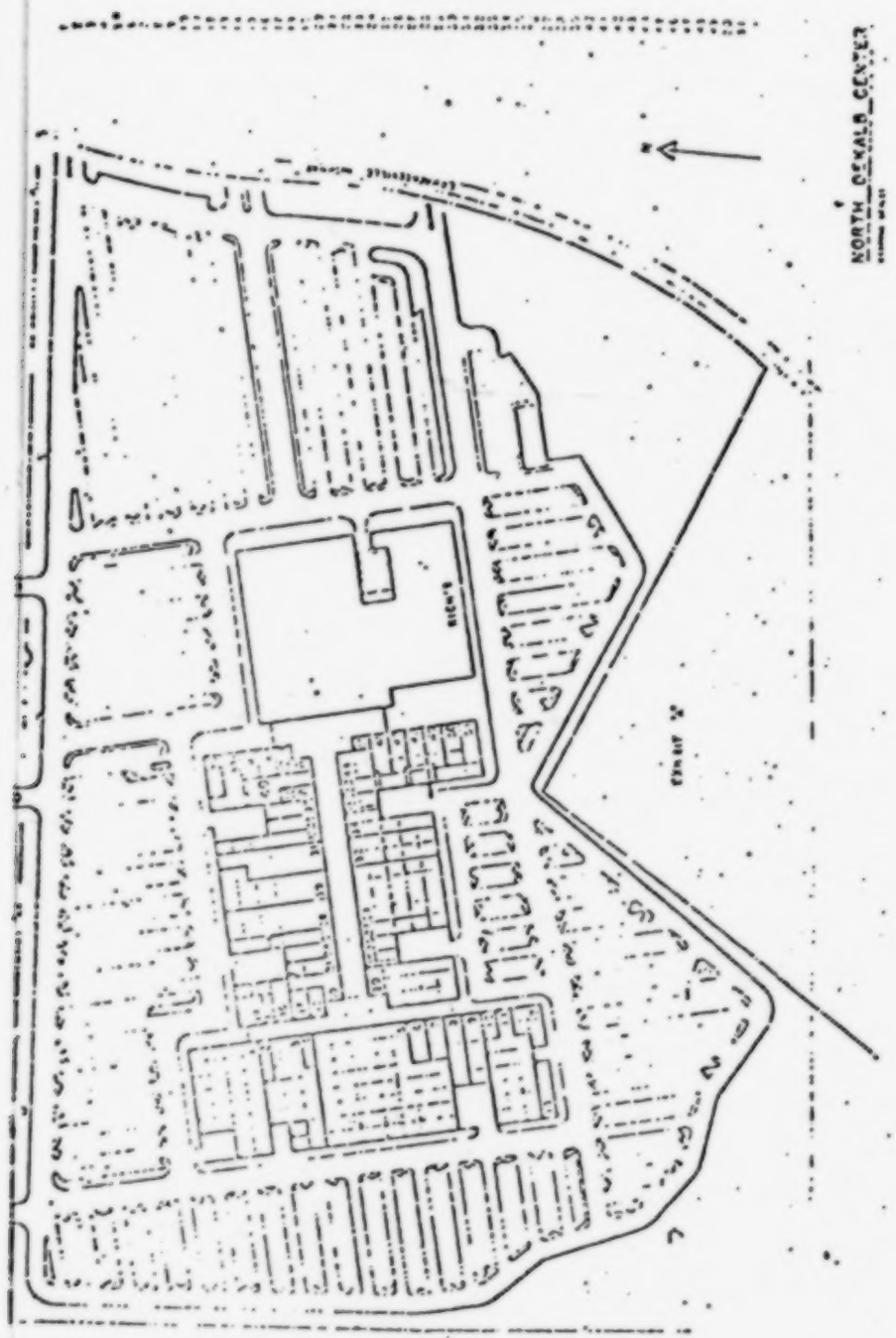


Exhibit 2 to Stipulation



5:1

EXHIBIT 3

TO STIPULATION

STATE OF GEORGIA
COUNTY OF FULTON

I, Roger L. Long, residing at 273 Fletcher Street, S. W., Atlanta, Georgia, being duly sworn state:

My telephone number is 753-1942. I am employed by Butler Shoe Company in the Warehouse at 204 Brookwood Drive, N. E. Atlanta, Georgia. I am employed as a selector. I do not have any supervisory authority. I do not have any employee working under my supervision. I am a member of the Retail Clerks Union.

I am a member of the Retail Clerks Bargaining Committee with Butler Shoe Company. On January 22, 1971 at about 11:00 AM I went out to the North DeKalb Shopping Center along with one other colored employee of the Butler Shoe Warehouse to picket the Butler Shoe Store in the Mall shopping Center. Ronnie Holmes, Harold Glenn, Tyronne Taylor and DeWitt Freeman had been picketing this store earlier in the morning and were told that they were not allowed to picket. They called the union hall and that is the reason I and this other employee, Charles Todd, went out to the shopping center to picket. We met the other four men near the Butler Shoe Store in the Mall. Three men began picketing in front of the Butler Shoe Store in the Mall Shopping Center with picket signs reading "On Strike, Butler Shoe Company, AFL-CIO" or words to that effect. The picketing continued for about thirty minutes. Picketing was peaceful.

About 11:30 AM the building attendant came to me and told me that there was a telephone call for me. I went to the phone and a man by the name Doug Ballard told me that he had talked to some negro pickets earlier that morning and told them that

they could not picket in the Mall building and that if we did not stop picketing that he would have the police out there in about 30 minutes to lock us up. He said that we could stay but the signs would have to go. I told him that we had received word from our lawyer that it was O.K. to picket in the building and the best thing I know is to call our lawyer, Mr. Stanford, to get the matter straighten out, and that I would call him afterwards to find out what to do. Mr. Ballard said alright.

I called Mr. Stanford's office and he was on the phone and I was told to hold on. When Mr. Sanford talked to me on the phone he tried to explain to me something about the sliding doors at the mall and told me that maybe it would be best if we came in to the union hall. I then instructed the men to come on back to the union hall. The Mall is covered and has doors on the entrances. There are a number of other stores in the Mall other than Butler Shoe.

The strike ended on or about Jan. 27, 1971.

I have read the above and swear it is true and correct.

/s/ ROGER L. LONG

Signed and sworn to before me this 11th day of Feb. 1971.

/s/ S. L. MASCOTTI
S. L. Mascotti, *Attorney*
National Labor Relations Board

EXHIBIT 4

TO STIPULATION

STATE OF GEORGIA
COUNTY OF FULTON

I, Douglas C. Ballard, being duly sworn state:

I am General Manager of North DeKalb Shopping Center which is owned and operated by D. Scott Hudgens, Jr. There are sixty (60) retail stores in the DeKalb Shopping Center and one of these is the Butler Shoe Store. Scott Hudgens, Jr., is in the Real Estate and Development Business in the state of Georgia.

On or about January 22, 1971 at about 9:00 A.M. I noticed that there were four or five persons sitting on a bench with picket sings waiting for the Butler Shoe Store to open. They were sitting close to the Butler Shoe Store. I told these pickets that they were not going to picket our mall. If you want to picket you will have to be outside. I sympathize with your problem but the malls' primary purpose is for shoppers to shop in stores. If you don't leave I'll have you arrested. I told them that they would have to picket in North Druid Hills Road or Lawrenceville Highway. Later in the morning our lawyer, Dock Heard Davis told them that they could picket on the sidewalks to the mall I talked to the pickets on the telephone and told them once again that they would have to leave. I do not recall whether I told them that I would have them arrested.

I have read the above and swear it is true and correct.

/s/ DOUGLAS C. BALLARD
Douglas C. Ballard

Signed and sworn to before me this 12th day of February, 1971.

/s/ S. L. MASCOTTI
S. L. Mascotti, Attorney
National Labor Relations Board

BEFORE THE NATIONAL LABOR RELATIONS BOARD
* * (Caption—10-CA-8823) * *

ORDER GRANTING MOTION, APPROVING STIPULATION AND TRANSFERRING PROCEEDING TO THE BOARD

On March 29, 1971, Scott Hudgens, an Individual, Local 315, Retail, Wholesale & Department Store Union, AFL-CIO, and the General Counsel of the National Labor Relations Board, filed with the Board a joint Motion to Transfer Case to the Board, and a Stipulation entered into by the parties on March 24, 1971. The parties stipulated to certain facts and agreed that certain formal papers and the Stipulation constitute the entire record in the case. They waived a hearing before a Trial Examiner, the making of findings of fact and conclusions of law by a Trial Examiner, and the issuance of a Trial Examiner's Decision and agreed that, in lieu thereof this case shall be proceed and be transmitted directly to the Board in Washington, D. C., for findings of fact, conclusions of law, and the entry of an appropriate Order by the Board. They expressly waived all further hearings, taking of testimony, submission of evidence, oral argument, filing of exceptions, or other procedure before the Board; provided, however, that the parties may file briefs with the Board on or before May 10, 1971, or within such time as the Board may provide.

The Board having duly considered the matter,

It Is Hereby Ordered that the Motion to Transfer Case to the Board be, and it hereby is, granted, and that the above-entitled proceeding be, and it hereby is, transferred to and continued before the Board in Washington, D. C., for the purpose of making findings of fact and conclusions of law and for the issuance of a Decision and Order.

It Is Further Ordered that the Stipulation be, and it hereby is, approved and made a part of the record herein.

The parties herein may file briefs with the Board in Washington, D. C., on or before May 10, 1971.

Dated, Washington D. C., March 30, 1971.

By direction of the Board:

GEORGE A. LEET,
Associate Executive Secretary.

BEFORE THE NATIONAL LABOR RELATIONS BOARD
* * (Caption—10-CA-8823) * *

RESPONDENTS MOTION FOR RECONSIDERATION

Scott Hudgens, Respondent herein, by his attorneys, repectfully moves, pursuant to Section 102.48(d) of the Rules and Regulations of the National Labor Relations Board, that the Board *en banc* reconsider the panel decision and order of August 16, 1971 (hereinafter referred to as the "panel decision") entered in the above captioned matter, after granting Respondent an opportunity to present oral argument to the Board *en banc*, for the extraordinary circumstances described below.[1] The instant case is one of paramount national concern which warrants careful reconsideration, after oral argument, by a fully-constituted National Labor Relations Board.

Introductory Statement

The panel decision is based on the misconception that the only rights hereinvolved are those set forth in Section 7 of the Act. There is, however, as recent Board decisions have made clear,[2] another, and in this case over-riding, interest. A property owner has a Constitutional right to prevent his private commerical property from being confiscated without just compensation. This right, as the Supreme Court observed in *NLRB* v. *Babcock & Wilcox Co.*, 351 U. S. 105, 112 (1956), flows from the same authority, the National Government, that grants employees organizational rights. Where, as here, a union has effective alternative means for exercising its Section 7 rights, a property owner cannot be compelled to subsidize such a competing use of his property. Yet this is the result of the panel decision—the Respondent is required to provide, free of charge, its valuable commercial facilities to be utilized in a manner that will distract and even drive away those very customers it has attracted to the North DeKalb Shopping Center. This significant confiscation of Respondent's property, as shown below, is neither required by *Babcock & Wilcox* or *Amalgamated Food Employees* v. *Logan Valley Plaza*, 391 U. S. 308 (1968), nor constitutes a permissible erosion on the doctrine of abstention.

1. The instant case amply meets all of the criteria described by Chairman Miller in his address to the Labor Law Section of the American Bar Association, as reported at 74 LRR 348 (August 17, 1970). It is a case of widespread general importance and interest to employers throughout the country. The issues involved are novel and significant ones which have not been previously resolved by the Board. And finally, the Union's conduct here is not unique; it is likely to be repeated time and again by numerous unions at numerous shopping centers for numerous varied purposes.

2. *Monogram Models, Inc.*, 192 NLRB No. 99 (Aug. 18, 1971); *New Pines, Inc.*, 191 NLRB No. 144 (July 8, 1971); *The Falk Corporation*, 192 NLRB No. 100 (Aug. 18, 1971); and *Scholle Chemical Corp.*, 192 NLRB No. 101 (August 18, 1971).

Statement of Facts

The panel decision gives short shrift to both of the critical elements in this case: the situs of the Union's activities and the alternative channels of communication were available. This is a fundamental defect; by failing to appreciate either the nature of the North DeKalb Shopping Center or the effective alternative means of communication that were available, the panel disregarded the need to accommodate the competing interests here involved.

1. *The Nature of the North DeKalb Shopping Center*

The North DeKalb Shopping Center is a private shopping center.[3] Respondent has made a substantial, continuing investment in the Center in order to attract potential customers to, and encourage them to do business with, the establishments maintained there. There is a large parking area provided for

3. The Center is clearly marked and preserved as private property. Each night, for example, the interior mall area is locked and access denied the public. The Center is also protected by a security guard which regularly patrols the area.

customers only and a totally covered shopping mall containing approximately sixty tenant stores. A continuous expenditure is required for advertising, an extensive inventory of quality merchandise and business promotions and displays to induce prospective customers to come to the Center. A considerable investment is also necessary so that, once having been attracted to the Center, potential purchasers will fully utilize its various shopping facilities; the Center must be considered as a pleasant, conducive place to shop without disruption and interference. It is for this reason that the mall area is designed to be virtually indistinguishable from the selling areas of the stores[4] and shoppers there provided with controlled temperatures, piped-in music, restroom facilities and benches and receptacles placed on an attractive common aisleway. It is for this reason also that Respondent and the tenant stores expend substantial sums annually to provide the varied services, such as security, maintenance, insurance, utilities, air conditioning, taxes and licenses, and so on, necessary to operate the common areas of the Center.

Since the sole purpose of Respondent's substantial investment in the Center is to obtain and preserve the patronage of the public, all activity on Center premises which does not directly promote its commercial purposes is forbidden. This prohibition is one which applies with equal force to both Respondent, its tenants and strangers alike.[5] The restriction is one enforced without discrimination. Non-commercial conduct is barred

4. The tenant stores have an unobstructed frontage on, and their displays and merchandise are easily visible from, the mall common aisleways. There are also three kiosks or leased mall sales booths actually located in the middle of the aisleway. One of these kiosks was located within 10 or 15 feet of the points shown on Exhibit 1 of the Stipulation where the pickets' paths stop at the corner of the Butler store.

5. As a specific condition of the tenant agreements with Respondent, under which Respondent receives a percentage of the tenant sales, it is agreed that all non-promotional activity on the mall common areas is prohibited. This condition is strictly enforced with one exception. An unrented and available kiosk or booth may be provided, upon advance reservation, for certain specific non-Center activities. Here, however, the Union made no attempt to seek the use of this location.

because it would unavoidably disrupt and distract shoppers, and appropriate their limited purchasing time, with matters unrelated to Center business. It would both burden the facilities of the Center and detract from its sales. As a result, although the Center is besieged with many calls each week from various groups seeking to use the mall common aisleways for a multitude of reasons, all such conduct has been uniformly prohibited.

2. *The Effective Alternative Means of Communication Available*

The panel decision seriously distorts the record in assuming that, if the Union could not picket within the enclosed mall, the pickets "would have to picket on North Druid Hills Road or Lawrenceville Highway." Sl. Op., p. 6. While such a statement may have initially been made, the Union clearly understood that the Respondent did not, in fact, contest the right to picket *anywhere* except upon the commercial area of the mall common aisleways. This was the *only* situs which Union picket Long understood picketing would not be allowed (Stip. Exh. 3); the *only* place that Respondent's attorney Davis informed Union attorney Standford where pickets would be requested to leave (Stip., par. 9); and the *only* situs which the Respondent contended in its brief that picketing would be impermissible. As stated in that brief, the public may use either the "sidewalks in the parking areas or along the outer perimeter of the building . . . for various purposes, *including picketing*, provided there is no unreasonable interference or hindrance to those persons wishing to enter and shop at any of the stores located inside . . . There is no question that the Local 315 pickets have a right to utilize the parking areas and sidewalks, *and they were invited to do so* . . . " Resp. Br., pp. 2, 4 (emphasis added).

This salient fact is significantly omitted from the panel decision. The panel thus failed to recognize that the Union's objective could have effectively been achieved at other locations than the interior of the mall. Eighty-five to ninety percent of the

Butler customers entered through one of the four entrances to the enclosed mall. Stip., par. 7. By stationing a picket at each of those entrances there would have manifestly been a full communication of the Union's message.[6] Here, as in *Babcock & Wilcox*, other means for the exercise of the Union's Section 7 rights were clearly available. And in contrast to Logan Valley, there was no "substantial hind[rance] to the communication of the ideas which [the Union] seeks to express." 391 U. S. at 323. The alternative available was not inefficient and hazardous berms 350 to 500 feet distant but safe and effective locations 50 to 125 yards *inside* Center property. Stip., Exh. 1. There was no basis, accordingly, for confiscating Respondent's private property.

Argument

1. *The Panel Decision Is Contrary to Babcock & Wilcox and Board Decisions Thereunder*

In *Babcock & Wilcox*, as the Board recently observed, the Supreme Court held that, in the absence of discrimination, "an employer may validly post his property against non-employee distribution of literature if reasonable efforts by the union through other available channels of communication will enable it to reach the employees with its message."[7] This same rule should apply to the exercise of Section 7 rights generally. It makes little difference, for example, that the Union here chose nonemployee picketing,[8] rather than handbill distribution, as its means of communication. Nor does the assertion "quasi-public" nature of

6. Effective communication of the Union's message could also have been achieved by any of the other media described in *Babcock & Wilcox:* mail distribution to potential customers and Butler employees; door-to-door contacts with such persons; newspaper, radio and television communication; telephone solicitations of the desired audience; etc. Moreover, there was no showing that Union picketing at the Butler warehouse did not constitute a reasonable alternative.

7. *Monogram Models, Inc., supra,* 77 LRRM at 1914.

8. The pickets here—employees of the Butler Shoe Warehouse in Atlanta—were "nonemployees" for the purposes of *Babcock & Wilcox*. They had no normal business at the Butler retail store in

a shopping center alter the situation—a shopping center is surely no more or less accessible to the public than the large hotel involved in *New Pines* which was "open year round and provides rooms, food, beverages, and entertainment for 900 guests."[9] The test in this case, as in *New Pines*, must be whether the inaccessibility of the desired audience makes ineffective reasonable attempts to communicate through the usual channels.

It is clear, for the reasons previously described, that in the instant case the Union's desired audience was not inaccessible. Nor did the Union make any attempt to utilize alternative available means of communication. While, as in *Monogram Models*, the most convenient place to picket may have been in front of the Butler store, the *Babcock & Wilcox* criterion is "not one of reasonable convenience, but rather whether the [desired audience is] . . . beyond the reach of reasonable union efforts to communicate with them." 77 LRRM at 1914. There has been no such showing in this case. On this ground alone, rehearing, and a reversal of the panel decision, is warranted.

2. *The Panel Decision Is Contrary to Logan Valley*

Even assuming *arguendo* that *Logan Valley* and not *Babcock & Wilcox* applies here, that case does not sanction the union conduct here involved.

In *Logan Valley* the Court balanced free speech rights against property rights, weighing employer activity which "substantially

the Center. This case, therefore, does not fall within the different rule applicable where, as stated in *Babcock & Wilcox,* employees desire "to discuss self-organization among themselves."

9. *New Pines, Inc., supra,* 77 LRRM 1544-5. See also *S. & H. Grossinger's Inc.,* 156 NLRB 223, *enf. den.,* 372 F. 2d 26 (2d Cir. 1967) and *Kutsher Hotel & Country Club, Inc.,* 175 NLRB No. 76, *enf. den.,* 427 F. 2d 200 (2d Cir., 1970); and see also *Priced-Less Discount Foods, Inc.,* 162 NLRB 872 (1967), a case relied upon by both the General Counsel and the panel decision. There, notwithstanding that the site was one "open to the public and employees," the Board applied the *Babcock & Wilcox* test and found an unfair labor practice solely because the employer had prohibited the Union's desired activity while having previously permitted such conduct by other nonemployees. 162 NLRB at n. 1.

hinder[s] the communication of the ideas which [the Union] seeks to express" against union activity which "significantly interfere[s] . . . with the use to which the mall property was put by both [Respondent] and the general public." 391 U. S. at 323. The pickets there were allowed access not as a matter of absolute right but as a result of an accommodation of conflicting interests based on the specific factual circumstances involved.

In this case, as previously demonstrated, the Union, unlike the union involved in *Logan Valley*, had effective alternative means by which to communicate its ideas. The Respondent was not seeking to "immunize" the Center from on-the-spot criticism or create "a *cordon sanitaire* of parking lots around [its] store." 391 U. S. at 324-5. To repeat, the Union was perfectly free to accept the Respondent's offer that it picket at the entrances to the enclosed mall. Such a site would have afforded the Union a proximate, safe and effective place to communicate its message.

Moreover, since any remedy the Broad fashions must "ensure non-interference with customers and employees,"[10] the significant interference that would have resulted from the Union's desired activity further strikes the balance against permitting such activity. Here, in contrast to *Logan Valley*, a "significant claim to a protection [can] be raised." *Id.* at 324. There is a clear likelihood that the pickets in this case would have physically interfered with the retail operation of the various stores, kiosks and booths located within the mall. There was a circumscribed area available; it is almost inevitable that picketing along the narrow common aisleways would impede entry to business, usurp customer accessways and rest areas and disturb pedestrian traffic. Indeed, the prospect that such interference would cause an obstruction or escalate into a breach of peace, thereby seriously interfering with business operations, is the reason that picketing at such a location would have been unlawful under Georgia law.[11] At the very least, picketing inside the mall would seriously

10. *Logan Valley*, 391 U. S. at 323 (Douglas, *J.*, concurring).

11. See pp. 11-12, *infra*. The panel decision appears to require, as a prerequisite to a lawful assertion of the employer's rights, evidence of actual undue interference "with the normal use of the mall."

distract customers from the very purpose for which they have been invited there—shopping.[12]

The enclosed mall in this case is substantially similar to a department store with the various tenant stores comparable to the separate leased departments of such a store. In fact, the reasons for prohibiting solicitation from both selling and public non-selling areas (such as waiting rooms, restrooms, elevators and corridors) of retail stores—that such conduct would interfere with the conduct of the employer's business and pose no unique problems of union communication[13]—are surely equally applicable here where picketing, a more signficant interference than mere solicitation, is involved. For the same reasons that picketing could be forbidden either inside a store or in obstructing entrances, the Respondent had a right to prevent the Union from picketing inside the enclosed mall. The contrary decision of the panel should be reexamined and reversed.

Sl. Op., p. 7. In other words, the panel would require that an employer await an actual breach of peace before removing an inherently disturbing element from its property. This unreasonable requirement is clearly neither sanctioned by Georgia or Board law. See, *e.g.*, *Marshall Field & Co.*, 98 NLRB 88, *enfd.*, 200 F. 2d 375 (7th Cir. 1952), where the *possibility* of interruption or disturbance was considered sufficient to exclude solicitation from both the selling and nonselling areas of a retail store.

12. The public comes to the North DeKalb Shopping Center because of the substantial investment that has been made to gain and retain its patronage. The patrons have been led to believe, through the expenditure of considerable money and effort, that the Center is a comfortable and convenient place to do business. They have a limited amount of shopping time available. If, upon entry, such prospective customers are enticed to devote their restricted purchasing time to a variety of controversial competing uses, there will clearly be a serious adverse effect on the normal sales activities of the Center. It is for this very reason that even the tenant stores, apart from the kiosks which pay for the privilege, have been prohibited from utilizing the common aisleways of the mall for their own purposes. To now appropriate Respondent's property for the activities of others is truly "to create a court-made law wholly disregarding the constitutional basis on which private ownership of property rests in this country." *Logan Valley*, 391 U. S. at 333 (Black, *J.*, dissenting).

13. *Marshall Field & Co., supra*. See also the various other cases in which the Board has held that employers may lawfully prohibit

3. *The Panel Decision Is Contrary to the Doctrine of Abstention*

Even if the Union does have a right to picket inside the mall, the Board should not interfere, as it has here,[14] with state criminal proceedings. The same rules of abstention which apply to federal court injunctions of state proceedings apply with equal force to Board cease and desist orders. In each case, an agency of the federal government—through an enforceable order—stays a valid state court proceeding or threat thereof.

In *Douglas* v. *City of Jeannette*, 319 U. S. 157 (1943), the Supreme Court held that federal courts (and similarly a federal agency with judicially enforceable cease and desist powers) should not interfere with, and should not enjoin, enforcement of state law in the absence of a showing that the state will enforce its law in bad faith or that irreparable harm will result. The Court also held that arrest, prosecution and conviction for violation of a city ordinance is not such irreparable harm as would justify a federal court's interference. Accord: *Cameron* v. *Johnson*, 390 U. S. 611 (1968).

Here there was no showing that the state trespass law invoked by Respondent to remove pickets from its property was invalid[15]

nonemployees from soliciting and distributing union matter in certain areas of retail store premises and enforce that prohibition by expulsion and by maintenance of surveillance over the nonemployees who enter the store for such purposes as, *e.g.*, *G. C. Murphy Company*, 171 NLRB No. 45; *Heck's, Inc.*, 170 NLRB No. 53; and *Super X Drugs of West Virginia, Inc.*, 169 NLRB No. 42.

14. The Board found specifically that the "threat to cause the arrest of the pickets for criminal trespass" violates the Act (Sl. Op., p. 7) and issued a cease and desist order (*i.e.*, an injunction) against such threat (Sl. Op., p. 8), thereby staying the normal criminal law processes of the State of Georgia.

15. The Georgia trespass law (Georgia Rev. Code § 26-3005) provides:

> It shall be unlawful for any person, who is on the premises of another, to refuse and fail to leave said premises when requested to do so by the owner or any person in charge of said premises or the agent or employee of such owner or such person in charge. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished as for a misdemeanor.

This statute has been repeatedly applied in cases similar to the instant one. See, *e.g.*, *Walker* v. *State*, 220 Ga. 415, 139 S. E. 2d 278 (1964) (trespass conviction for demonstrating inside of a restaurant) and *Kitchens* v. *State*, 221 Ga. 839, 147 S. E. 2d 509 (1966) (trespass conviction for creating a disturbance inside of a high school).

or that Georgia would enforce this law in bad faith. Indeed, as Chief Justice Burger noted in a similar situation in *Taggart* v. *Weinacker's*, 397 U. S. 223, 227 (1970) (concurring opinion), ". . . the protection of private property whether a home, a factory, or a store, through trespass laws, is historically a concern of state law." The Court has also noted that "federal interference with State's good-faith administration of its criminal laws is peculiarly inconsistent with our federal framework." *Dombrowski* v. *Pfister*, 380 U. S. 479, 484 (1965). Only where "the fact of prosecution" has a "chilling effect upon the exercise of First Amendment rights" (*id.*, at 487) should a federal agency—a court or a quasi-judicial administrative body —impede the normal enforcement of state law. There has been no such showing here.

Conclusion

For the foregoing reasons, it is respectfully submitted that this case should be reconsidered by the Board *en banc*, and Respondent should be afforded the opportunity for oral argument of its position before the entire Board.

Respectfully submitted,

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Dated: October 1, 1971 *Attorneys for Respondent*

BEFORE THE NATIONAL LABOR RELATIONS BOARD

* * (Caption—10-CA-8823) * *

ORDER DENYING MOTIONS

On August 16, 1971, the Board issued its Decision and Order in the above-captioned proceeding, finding that the Respondent has engaged in certain unfair labor practices and ordering that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Thereafter, the Respondent filed an untimely request for an extension of time within which to file a Motion for Reconsideration, which request the Board granted on September 14, 1971, for good cause shown. Under date of September 15, 1971, the Charging Party filed a document entitled "Motion in Opposition to Respondent's Motion for the Board to Reconsider its Decision and Order," in which it urged that the Board deny any motion for reconsideration filed by the Respondent on grounds of untimeliness and mootness. Subsequently, within the time allowed, the Respondent filed a motion for Reconsideration by the Board *en banc* and a request for oral argument, and the General Counsel filed a telegram in opposition.

As the Panel which originally considered this case can no longer be reconvened, the Board has considered the motion *en banc*. The Board having duly considered the matter:

It Is Hereby Ordered that the Charging Party's motion to deny the Respondent's Motion for Reconsideration on grounds of untimeliness and mootness be and it hereby is denied as lacking in merit.

It Is Hereby Further Ordered that the Respondent's Motion for Reconsideration be and it hereby is denied, as it presents no matters or issues within the scope of the record which have not been previously presented to and considered by the Board.

The Respondent's request for oral argument is accordingly also denied.

Dated, Washington, D. C., October 19, 1971.

By direction of the Board:

GEORGE A. LEET
Associate Executive Secretary

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
* * (Caption—10-CA-8823) * *

ORDER REMANDING PROCEEDING TO ADMINISTRATIVE LAW JUDGE

On August 16, 1971, the National Labor Relations Board issued its Decision and Order[1] in the above-entitled proceeding finding that Respondent violated Section 8(a)(1) of the National Labor Relations Act, as amended, and ordering Respondent to cease and desist therefrom and to take certain affirmative action, set forth therein.

Thereafter, while Respondent's Petition to Review and Set Aside the Board's Order, and the Board's answer and cross application for enforcement of its Order were pending before the United States Court of Appeals for the Fifth Circuit, the Supreme Court rendered its decisions in *Central Hardware* v. *N. L. R. B.*, 407 U. S. 539, and *Lloyd Corporation, Ltd.* v. *Tanner*, 407 U. S. 551. The Board moved the court to remand this proceeding to the Board for further consideration, and Respondent moved for summary reversal, in light of said decisions, and on July 17, 1972, the Court of Appeals for the Fifth Circuit remanded the instant case to the Board for reconsideration.

Subsequent to the remand, the Board, by letter dated September 15, 1972, advised the parties that they may submit statements of position with respect to the issues raised by the remand. Such statements were duly filed by Respondent and General Counsel. and the Respondent also filed a Motion to Remand to an Administrative Law Judge. The Board having duly considered the positions advanced by the parties, concludes that a hearing is required on the issues involved and the case should be remanded for such a hearing. Accordingly,

1. 192 NLRB No. 111.

It Is Hereby Ordered that the record be reported, and that a hearing be held before an Administrative Law Judge, to be designated by the Acting Chief of the Division of Judges, for the purpose of receiving evidence on the issues raised by the principles set out in *Central Hardware Co. N. L. R. B., supra,* and *Lloyd Corp., Ltd.* v. *Tanner, supra.*

It Is Further Ordered that the proceeding be, and it hereby is, remanded to the Regional Director for Region 10 for the purpose of arranging such hearing, and that said Regional Director be, and he hereby is, authorized to issue notice thereof.

It Is Further Ordered that upon the conclusion of such hearing, the Administrative Law Judge shall, on the evidence received pursuant to this Order and in the light of the opinion of the Supreme Court in *Central Hardware* v. *N. L. R. B., supra,* and *Lloyd Corporation, Ltd.* v. *Tanner, supra,* prepare and serve upon the parties a Decision containing findings of fact, conclusions of law, and recommendations based upon the evidence received, and that, following the service of such decision upon the parties, the provisions of Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, shall be applicable.

Dated, Washington, D. C., November 17, 1972.

By direction of the Board:

GEORGE A. LEET
Associate Executive Secretary

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

* * (Caption—10-CA-8823) * *

RESPONDENT'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION

The Respondent excepts to the failure of the Administrative Law Judge to make certain findings, conclusions and recommendations, as hereinafter specified:

1. At Decision 4 (hereinafter ALJD) lines 9-12: The finding that all the employees of Butler Shoe Corporation, regardless of their place of employment, are equally situated in respect to Section 7 rights solely because they work for the same parent company. This is in direct opposition to Board policy evidenced in *NLRB* v. *Cranston Print Works Co.*, 258 F. 2d 206 (4th Cir. 1958), where the court distinguished for trespass purposes between "active" employees and employees on an extended leave of absence and *Diamond Shamrock Co.* v. *NLRB*, 413 F. 2d 52, 57 (3rd Cir. 1971), which held on-duty employees were governed by different rules of access than off-duty employees. Under Board policy, therefore, the picketing employees here were "non-employees" for the purpose of applying the *Babcock & Wilcox* test.

2. At ALJD 4, lines 14-35: The failure to find that the Union could have picketed anywhere on Center property *except* inside the enclosed mall common aisleways; and discrediting the testimony of Douglas Ballard. Ballard's present testimony in this respect (R. 93-6) was in accord with both Long and his own prior evidentiary affidavits (Exh. 3 and 4 to the previously agreed-upon Stipulation), the admitted statements then made by Hudgens' attorney Davis to Union attorney Stanford (Stip., par. 3), the present testimony of pickets Taylor and Glenn (R. 35, 39-40, 43-4) and the position which Hudgens has repeatedly taken before both the Board and the Fifth Circuit.

3. At ALJD 4, lines 37 to p. 5, line 6, and fn. 1: The finding that both *Central Hardware*, as well as *Nichols of Ohio*, 200 NLRB No. 161, are "not precedent for what the law may be on this set of facts." In holding that the size of the North DeKalb Center was a distinguishing factor, the Administrative Law Judge's decision flew in the face of the Supreme Court's declaration in *Lloyd* that the "character of . . . privately owned abutting property does not change by virtue of being large or clustered with other stores in a modern shopping center." 33 L. Ed. 2d at 143. The critical question, which the Judge ignored, was whether the North DeKalb Shopping Center "had assumed the functions of the normal municipal 'business block.'" *Central Hardware*, 33 L. Ed. 2d at 128. If the Judge had made this inquiry, he would have resolved the question in the negative.

4. At ALJD 5, lines 9-30: The finding that the pickets were "engaged in conduct directly related to the purposes" the Center is used for. This finding is immaterial. It makes no difference that the Union's forum of expression here was publicity picketing, rather than handbill distribution or solicitation of employees and customers. What is critical is that the Union elected to invoke its alleged Section 7 rights before the Board; it did not seek, as it surely could have, to assert its purported constitutional rights before a state or federal court.

5. At ALJD 6, lines 27-35: The finding that the Supreme Court "realistically" agrees with the General Counsel's [*sic*] of the facts and the reliance on *Logan Valley* as support for this finding. This is not only an erroneous application of law, but contradicts this Administrative Law Judge's finding in this very case that the test to be applied is ". . . that set out in *Babcox and Wilcox*" rather than *Logan Valley*. Further, the Administrative Law Judge totally ignored extensive testimony proving that the North DeKalb mall did not assume in *any* way the functional attributes of property devoted to public use.

6. At ALJD 6, lines 39-54: The conclusion that the *Babcox & Wilcox* test, as reaffirmed in *Central Hardware*, is rendered inapplicable to resolution of the conflicting Section 7 and private property rights herein, due to the Judge's erroneous finding that the picketing was limited in scope to potential Butler Shoe customers *inside* the mall. Contrary to the Judge, *Babcock & Wilcox* and *Central Hardware* control disposition of this case. Moreover, the Judge's conclusion is internally inconsistent with his later conclusion (p. 8, lines 8-9) that *Babcock & Wilcox* is dispositive.

7. At ALJD p. 7, lines 15-39: The finding that other means of communication available to the Union are unreasonable because the Judge's feeling that the Union should not be required to "squander its assets in this fashion," or "dilute its message." Contrary to the Judge, the Board has recently held alternative avenues of communication are not unreasonable merely because they are "perhaps more expensive and less convenient" means of reaching the desired audience. *Monogram Models, Inc.*, 192 NLRB No. 99; *Dexter Thread Mills, Inc.*, 199 NLRB No. 113. The "proper aims of business men" are not dissimilar to those of a union; the means utilized to communicate a message not to purchase from a particular merchant are no different than those used to encourage such purchases.

8. At ALJD p. 7, lines 41 to p. 8, lines 1-8: The application of *Logan Valley* criteria to this case. *Central Hardware* holds that in cases involving Section 7 of the Act, *Babcock & Wilcox* standards, rather than *Logan Valley*, apply.

9. At ALJD p. 8, lines 10-14: The conclusion that the General Counsel has proven that the Union had no other reasonable means to convey its message. This conclusion is unsupported by a preponderance of the evidence.

10. At ALJD p. 8, lines 14-20: The Judge's attempt to reduce the available avenues of communication to only one option, e.g., picketing at the highways bordering the mall. This

erroneously narrows and mischaracterizes the wide spectrum of alternative avenues of communication open to the Union.

11. At ALJD p. 8, lines 24-27: The Judge's recommendation that the Board adhere to its original findings and issue a remedial order. The recommendation is erroneous as a matter of law and is unsupported by the preponderance of the evidence.

On the basis of the record herein, the Administrative Law Judge should have dismissed the Complaint in its entirety.

Respectfully submitted,

By /s/ LAWRENCE M. COHEN
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CERTIFICATE OF SERVICE

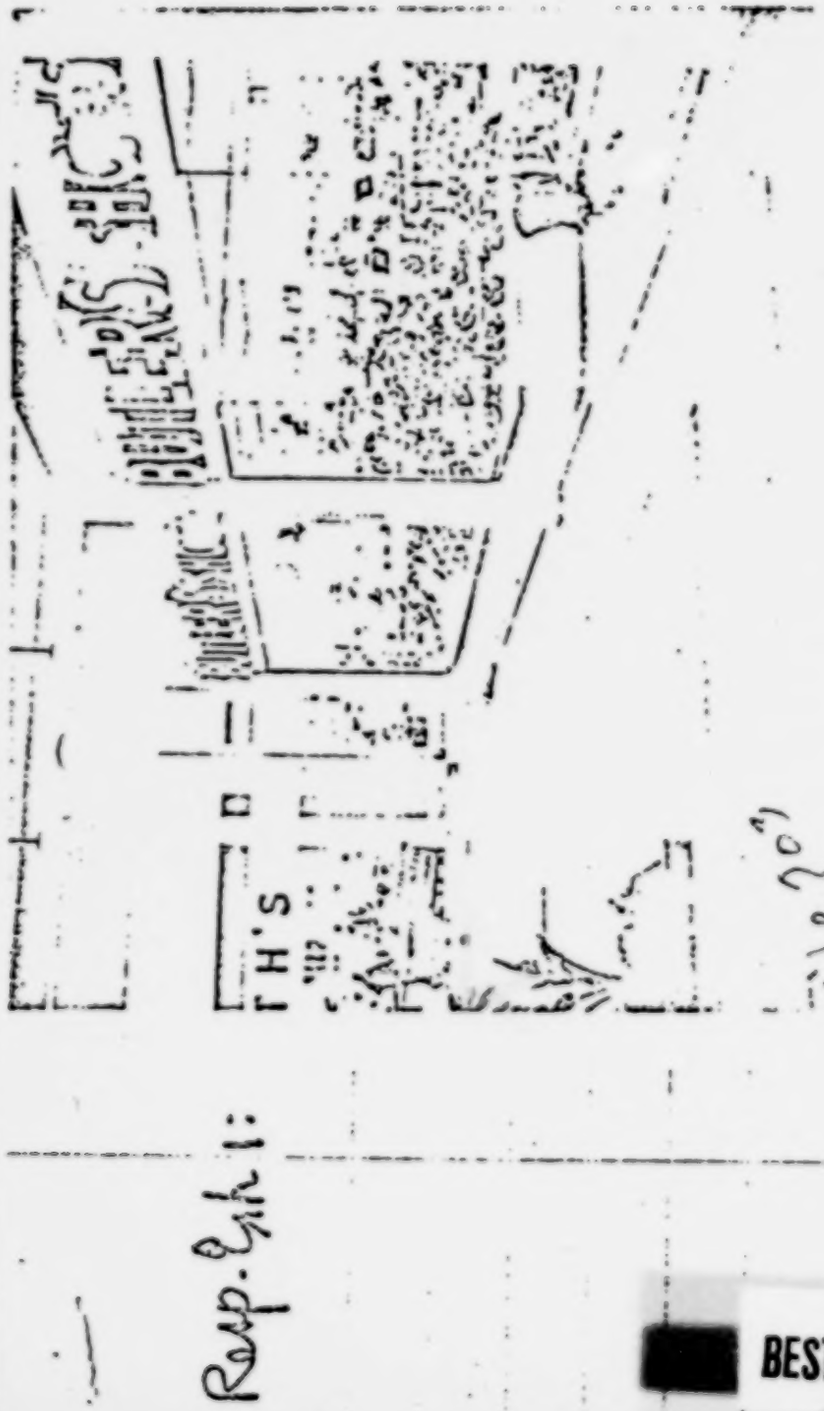
The undersigned, one of the attorneys for Scott Hudgens, an individual, hereby certifies that he has this day served a copy of the attached Respondent's Exceptions to Administrative Law Judge's Decision, by United States Certified Mail, Return Receipt Requested, postage prepaid, upon each of the following:

SYLVIO L. MASCOTTI, ESQ.
Room 710
730 Peachtree Street, N. E.
Atlanta, Georgia 30308

GUY H. DICKINSON, ESQ.
Regional Director, Retail, Wholesale and Department Store Union, AFL-CIO
1838 Stewart Avenue, S.W.
Atlanta, Georgia, 30315

/s/ LAWRENCE M. COHEN
Lawrence M. Cohen

Dated: May 25, 1973.



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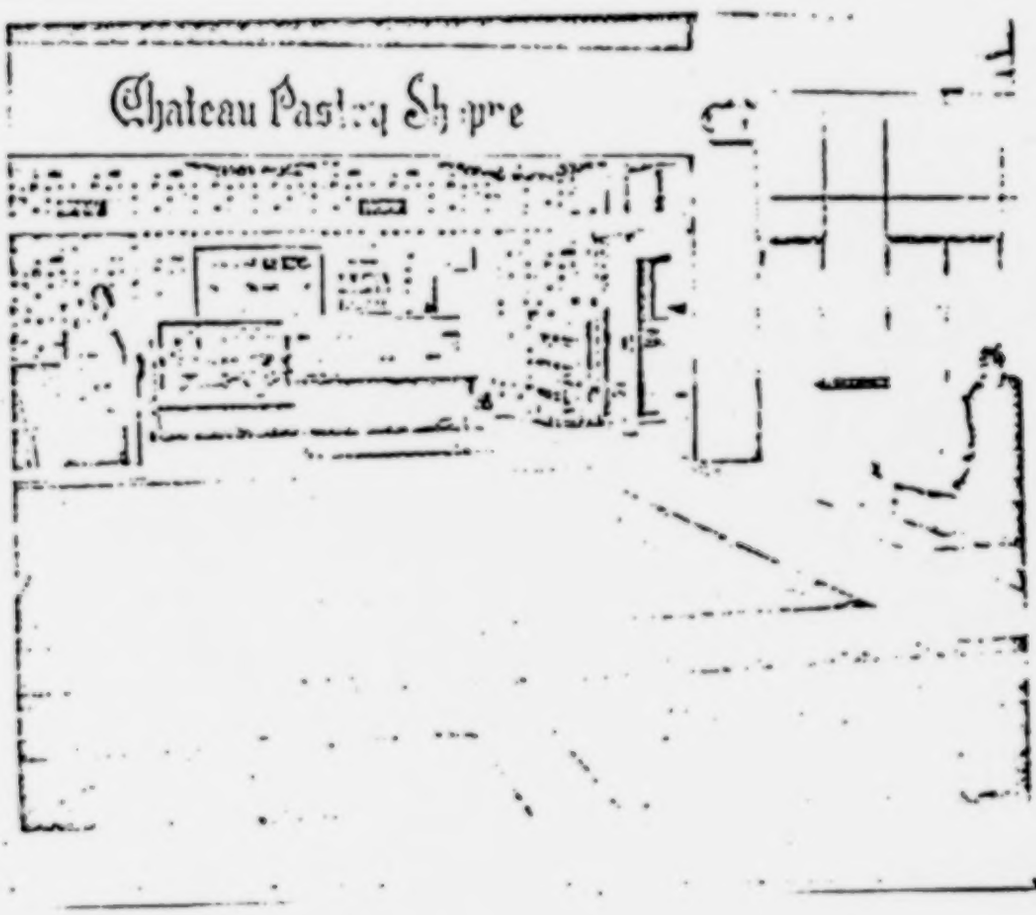
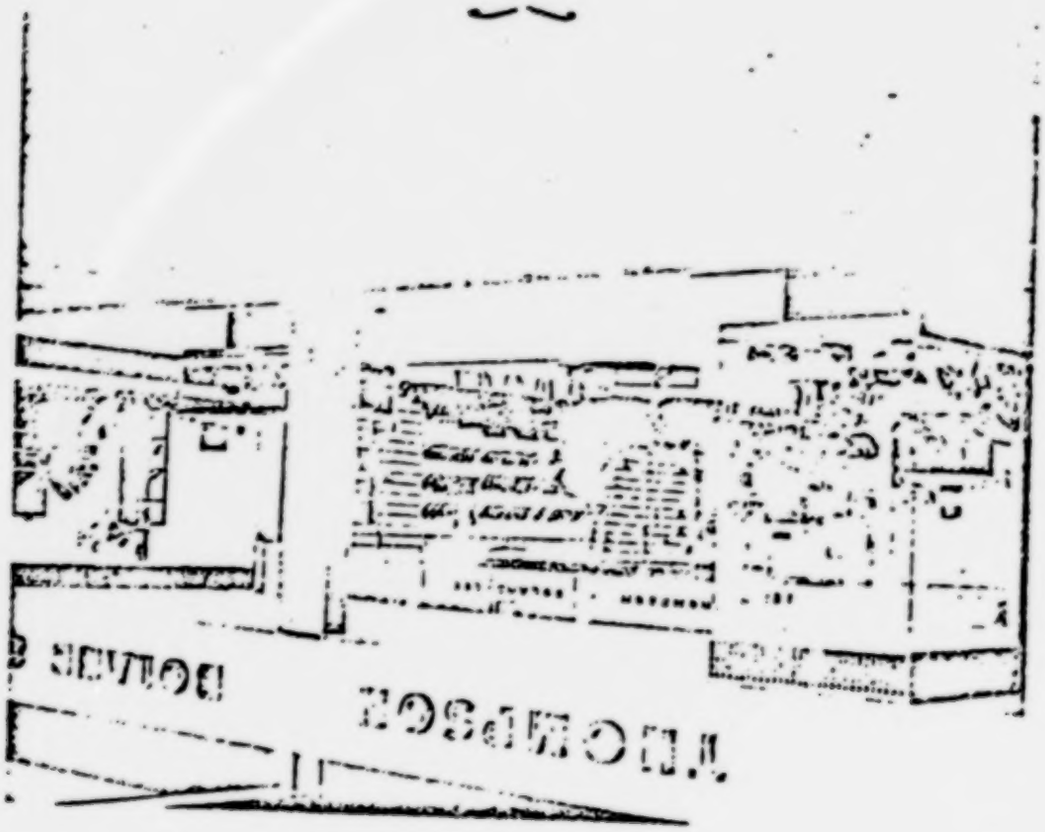
Resp. Exh. 6





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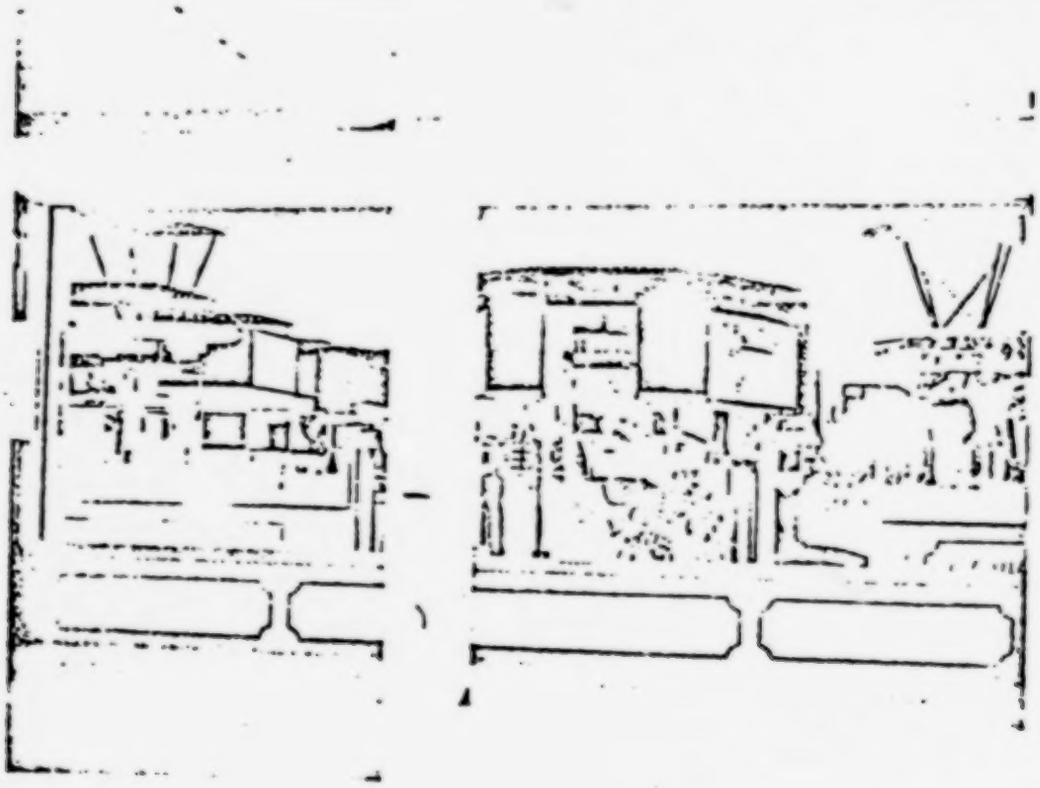

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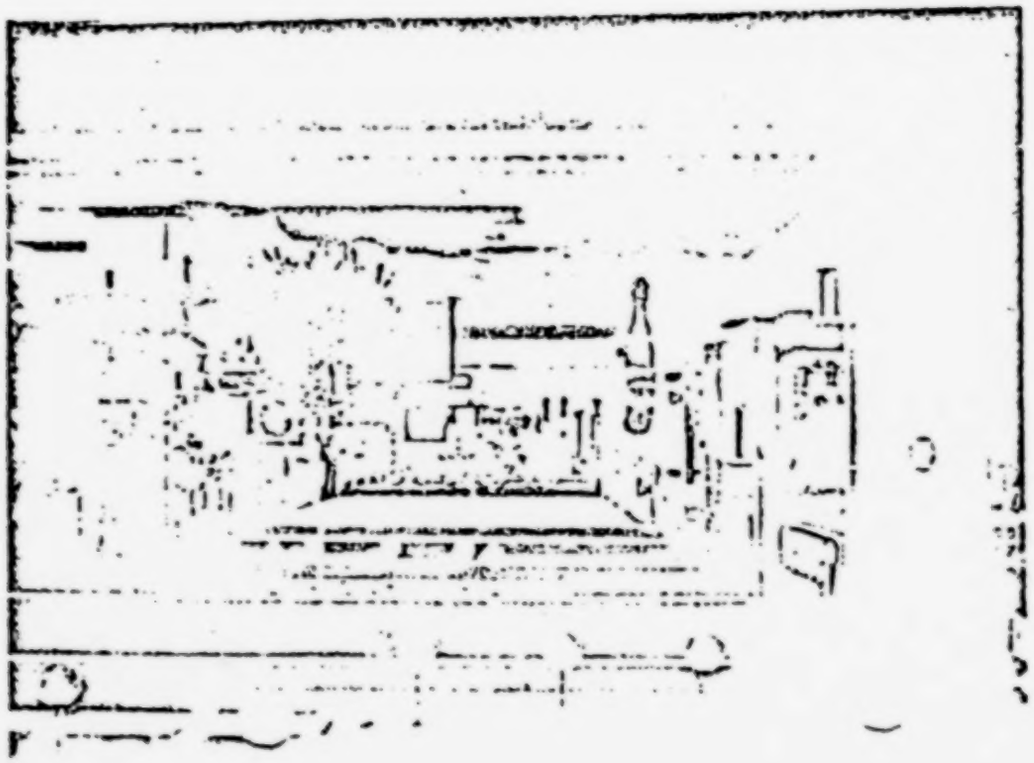


Dep. Ex. #13

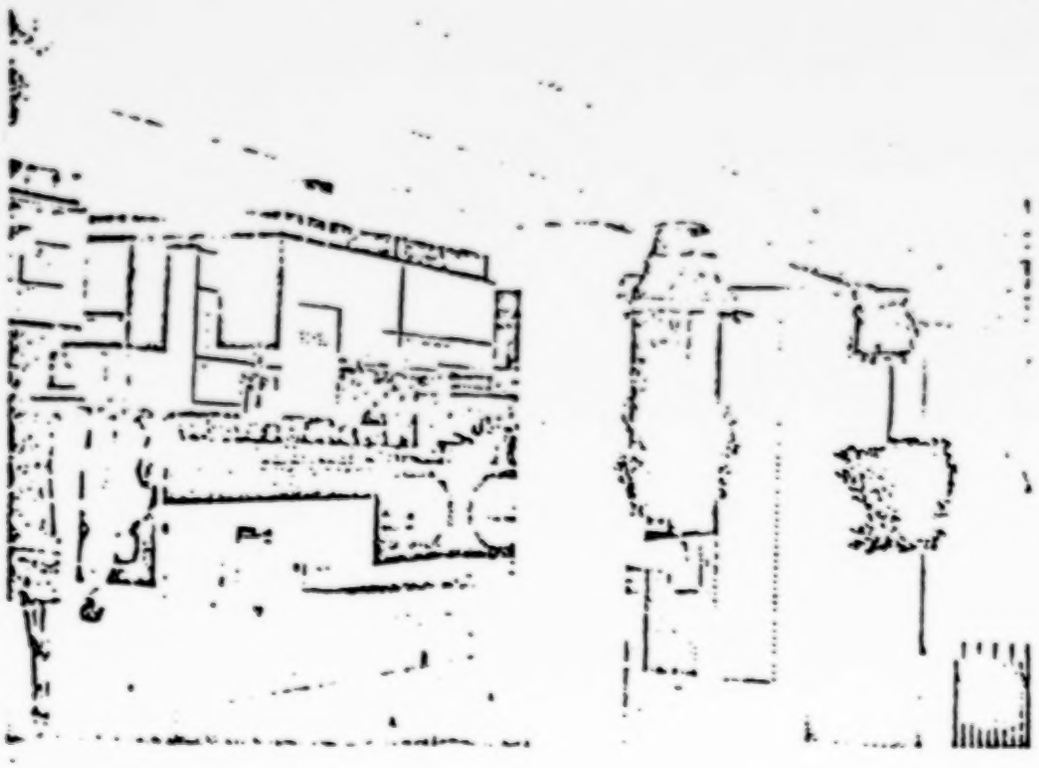
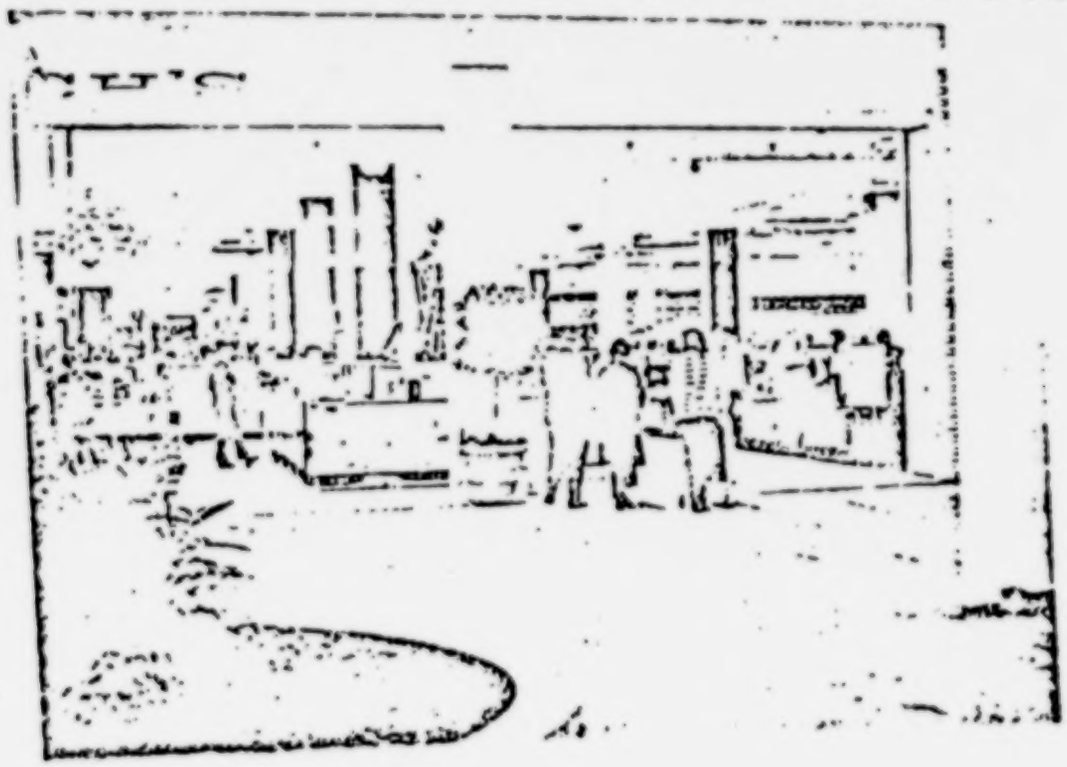
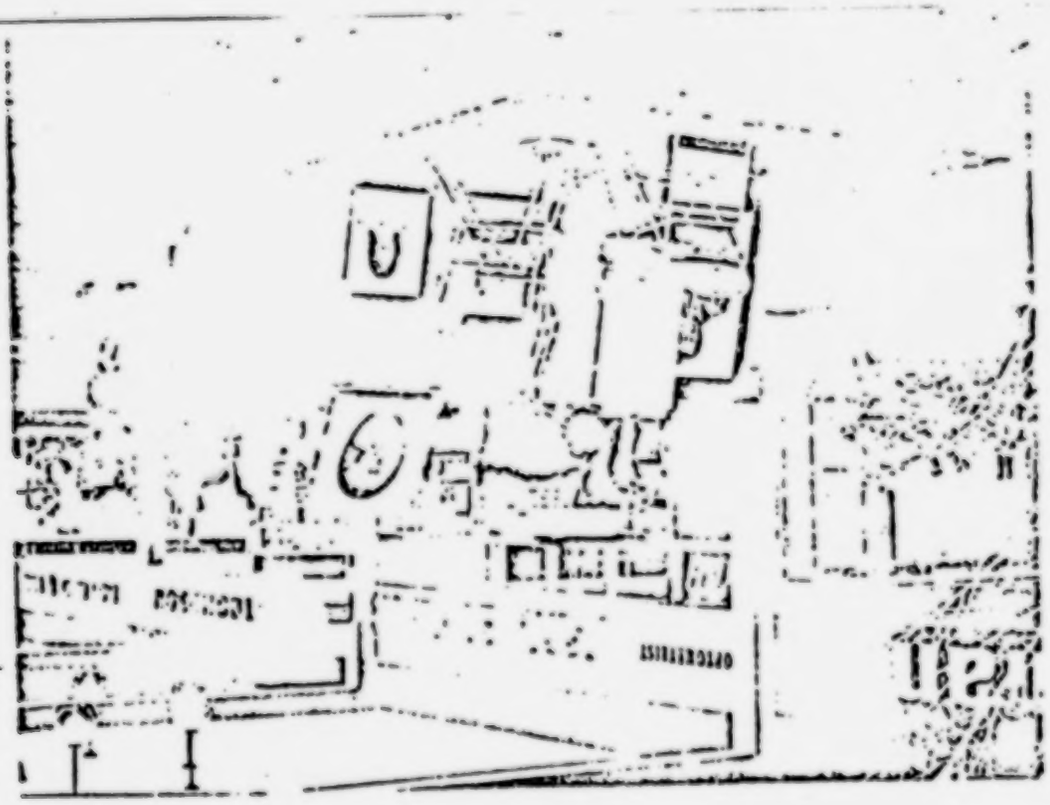


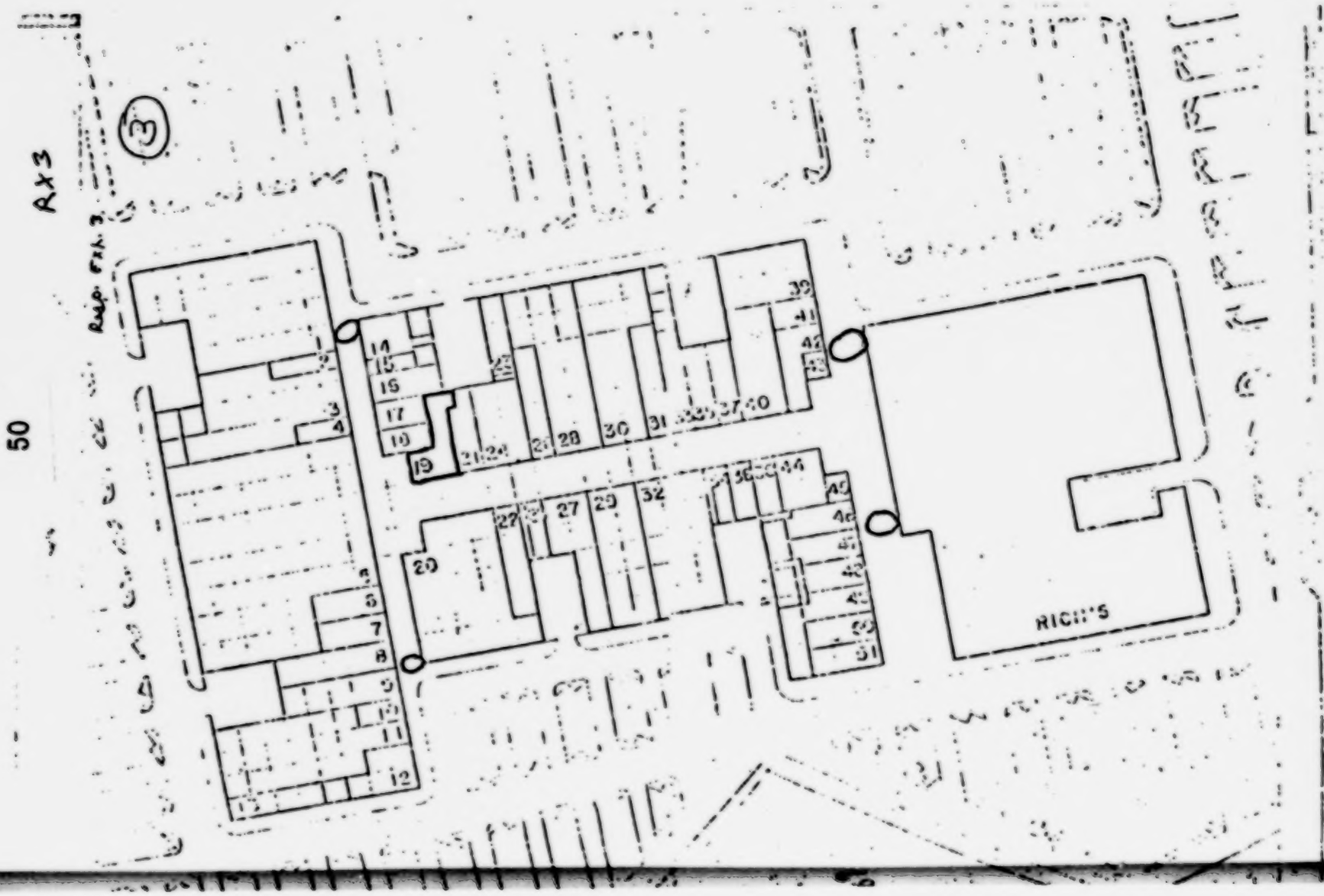
Fig. Ex. 14

Rep. Exh. (16)





Dep. Exh. 18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50
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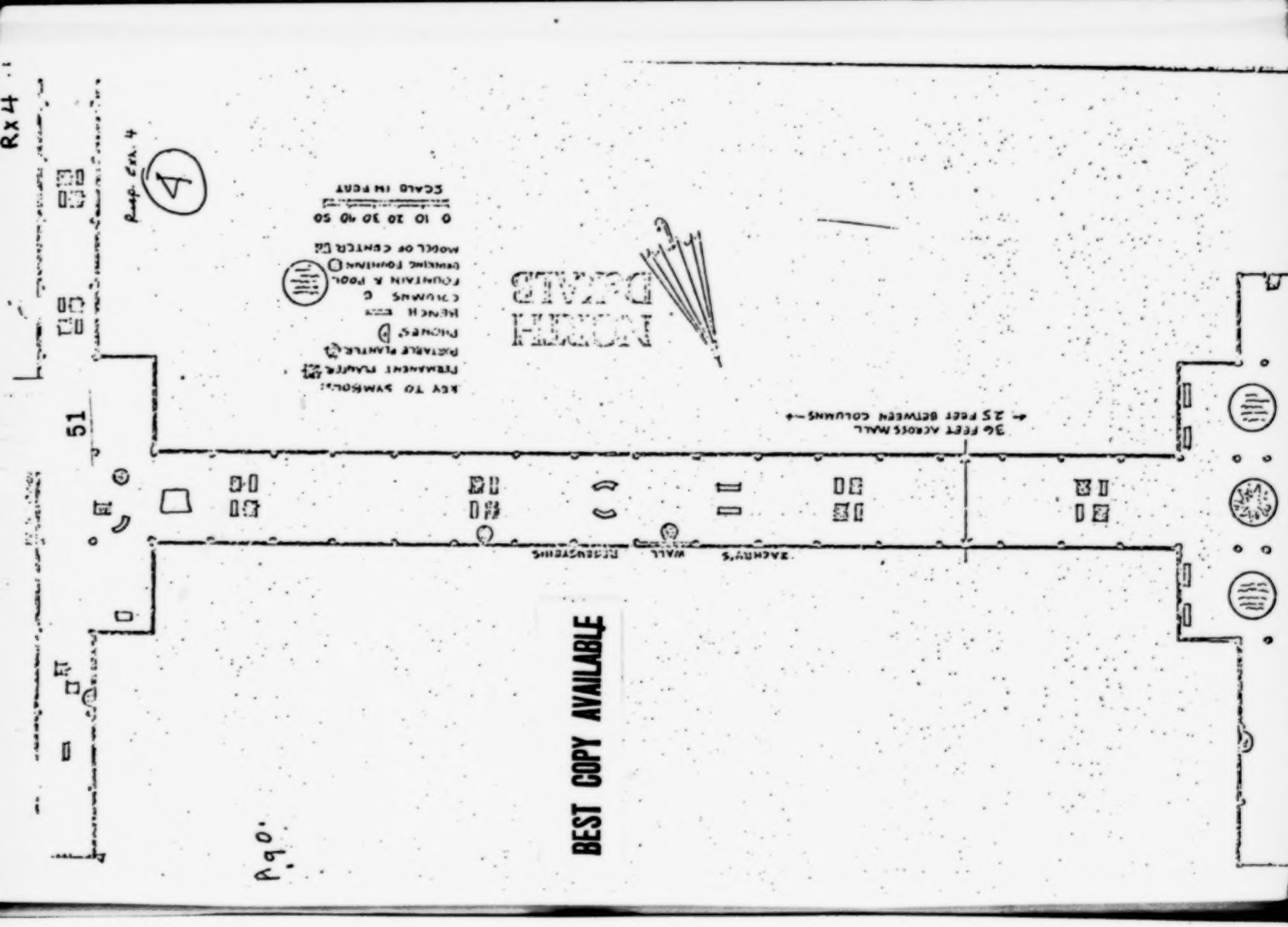
Rx 4
Prop. Exh. 4
4
51
KEY TO SYMBOLS:
PERMANENT PLANTER
MOVABLE PLANTER
PICNICS
BENCH
COLUMNS
FOUNTAIN & POOL
DRINKING FOUNTAIN
MODEL OF CENTER
0 10 20 30 40 50
SCALE IN FEET
36 FEET ACROSS MALL
25 FEET BETWEEN COLUMNS
ZACHRY'S
WALL
RESERVOIRS
PROPOSED
PRIVATE
DRIVE
NORTH
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RESPONDENT'S EXHIBIT 5

SHOPPING CENTER LEASE

An Enterprise of
Scott Hudgens

1. *Rent*

1.1. ***Minimum Rent.*** Lessee shall pay to Lessor, at the address designated by Lessor, a fixed, annual minimum rent of $....., payable in advance in equal monthly installments of $..... due on the first day of each calendar month throughout the term hereof. Such rent shall be prorated for any month in which the Lease is not in effect for the entire month.

1.2. *Percentage Rent.* Lessee agrees to pay to Lessor, by semi-annual payments due on July 20 and January 20, during each year, or fraction thereof, during the term of this Lease, a percentage rent, the payment due on July 20, being a sum of money equal to the amount by which ..... percent of Lessee's gross sales from the Demised Premises during the immediately preceding January 1 to June 30 period exceeds the minimum rent due from Lessee to Lessor from the same January 1 to June 30 period, and the January 20 payment being a sum of money equal to the amount by which said percent of Lessee's gross sales from the Demised Premises during the immediately preceding July 1 to December 31 period exceeds the amount of minimum rent due from Lessee to Lessor from the same July 1 to December 31 period. On the termination date of the term of this Lease, Lessee shall pay to Lesser the sum of money by which said percentage of Lessee's gross sales from the Demised Premises from the first of the month in which the last payment of percentage rental was due (January or July as the case may be) to the termination date exceeds the amount of minimum

rent due from Lessee to Lessor from the first of the month of the last due date of percentage rent to the date of termination.

* * * * *

4. *Common Areas*

4.1. *Parking and Access.* Lessor agrees that access roads, footways and parking facilities will be provided for the Shopping Center. Lessor reserves the unrestricted right to change the building perimeters, parking areas, any access roads, the sizes, identity, location and type of stores and any common areas or to construct new additional buildings, parking facilities or common areas; Provided, however, that the square footage of and access to the Demised Premises shall not be substantially or materially impaired.

Lessor hereby grants to Lessee, its employees, agents, customers and invities, the non-exclusive right to use the parking and other common areas as from time to time constituted, such use to be in common with Lessor, Lessor's licensees and all occupants of the Shopping Center, from time to time, its and their employees, agents, customers and invitees, Except when the same are being repaired, altered or constructed. Lessee shall not make any charge for customer parking. Lessor reserves the right to designate one or more areas in the Shopping Center for employee parking and Lessee shall cause its employees to park their vehicles only in such designated areas.

If at any time it becomes necessary for the purpose of preventing the acquisition of public rights in the common areas, Lessor may temporarily close portions of the common areas, erect private boundary marks or take further appropriate action for that purpose, and such action shall not be deemed an eviction or disturbance of Lessee's use of the Demised Premises. Lessor reserves the right, from time to time, to dedicate portions of the common areas to the public.

4.2. *All Weather Mall.* Lessor shall provide for the use and enjoyment of all occupants of the Shopping Center and their employees and invitees, an enclosed, all weather mall, which shall be maintained at a comfortable temperature during the normal business hours set by Lessor.

4.3. *Common Area Maintenance.* Lessee shall pay as additional rent, in monthly installments of $..... each, in advance, its share of the cost of the operation and maintenance of the common area, including those costs incurred for security, lighting, painting, cleaning, policing, inspecting, landscaping, repairing and replacing, which may be incurred by Lessor in its discretion, including a reasonable allowance for Lessor's overhead cost, depreciation of and taxes on maintenance equipment, the cost of hazard and public liability insurance, real property taxes on the common area, and the cost of all water consumed in the Shopping Center which is not separately metered to tenants. Lessee's share of such cost shall be determined by multiplying Lessor's cost by a fraction, the numerator of which is the number of square feet in the Demised Premises, and the denominator of which is the average number of square feet in the Shopping Center leased by Lessor during the preceding calendar year. The product so obtained shall be Lessee's share, and the January bill shall be adjusted to properly reflect Lessee's share during the preceding calendar year.

4.4. *Mall Maintenance, Heating and Air Conditioning.* If the Demised Premises opens onto the enclosed mall, Lessee shall pay, additional rent, in monthly installments of $..... each, in advance, Lessee's proportionate share of the security, operation, heating, air conditioning, maintenance costs, cost of hazard and public liability insurance and real property taxes on the enclosed mall. Lessee's share of such cost shall be determined by multiplying Lessor's cost by a fraction, the numerator of which is the number of square feet in the Demised Premises and the denominator of which is the average number of square feet in stores within the Shopping Center opening onto the enclosed mall and leased by Lessor during the preceding calendar year. The product so obtained shall be Lessee's share, and the January bill shall be adjusted to properly reflect Lessee's share during the preceding calendar year.

5. *Use of Demised Premises*

5.1. *Use and Care.* The Demised Premises shall be used only for .....

.....

.....

.....

and for no other purpose without the written consent of Lessor. Lessee shall, at Lessee's expense, promptly comply with all law, ordinances and regulations promulgated by duly instituted governmental authority affecting the cleanliness, safety, use and occupancy of the Demised Premises. Lessee agrees that it will not keep, use, sell or offer for sale in or upon the Demised Premises any article which may be prohibited by the standard form of fire insurance policy. Lessee agrees to pay any increase in premiums for fire and extended coverage insurance that may be charged during the time of this Lease on the amount of such insurance that may be carried by Lessor on Demised Premises or the building of which they are a part resulting from the type of merchandise sold by Lessee in the Demised Premises, whether or not Landlord has consented to the same. In determining whether increased premiums are the result of Lessee's use of the Demised Premises, a schedule, issued by the organization making the insurance rate on the Demised Premises, showing the various components of such rate, shall be conclusive evidence of the several items and charges which make up the fire insurance rate on the Demised Premises.

In the event that Lessee's occupancy causes any increase of premium for the fire, boiler and/or casualty rates on the De-

mised Premises or any part thereof above the rate for the least hazardous type of occupancy legally permitted in the Demised Premises, the Lessee shall pay the additional premium on the fire, boiler and/or casualty insurance policies by reason thereof and the Lessee shall also pay in such event any additional premium on the rent insurance policy that may be carried by Lessor for its protection against rent loss. Bills for such additional premiums shall be rendered by Lessor to Lessee at such times as Lessor elects and shall be due from, and payable by Lessee when rendered, and the amount thereof shall be deemed to be, and be paid as, additional rent; Lessee will not injure or deface the Demised Premises; Lessee will not overload the floors of the Demised Premises; Lessee will not permit any objectionable noise or odor to escape from the Demised Premises and Lessee will not use the Demised Premises for lodging or sleeping purposes. Where loading and delivery spaces are provided, Lessee will not use the front entrances or permit same to be used for truck delivery or pick up of merchandise or supplies and Lessee shall endeavor to have all deliveries to the Demised Premises made no later than 10:00 A. M. Lessee will not encumber or obstruct the sidewalks, malls or common areas adjoining the Demised Premises nor allow the same to be obstructed or encumbered and Lessee shall not place or cause to be placed, any merchandise, vending machines or anything else on the sidewalks, malls or exterior or the Demised Premises without prior written consent of Lessor.

Lessee shall keep the Demised Premises clean, both inside and outside, at its own expense, and will remove the ashes, garbage, excelsior, straw and other refuse from said Demised Premises. Lessee will not burn any materials or rubbish of any description upon the Demised Premises or in the parking and common areas of said Shopping Center. Lessee also agrees to keep the sidewalks and parking areas adjoining said store free from ice, snow, rubbish, dirt, ashes, garbage, excelsior, straw and other refuse. Lessee agrees to keep all accumulated

rubbish in covered containers and to have same removed regularly. Lessee shall keep said sidewalks free from snow and ice. In the event Lessee fails to keep the Demised Premises and other portions heretofore described in the proper condition, Lessor may cause the same to be done for Lessee and Lessee hereby agrees to pay the expense thereof on demand as additional rent.

5.2. *Stores Fronting on Mall.* If the Demised Premises fronts on an enclosed all weather mall, then Lessee will keep open for walk through traffic 60% of such frontage during all times that Lessee's store is open for retail business. Lessee will further air condition the Demised Premises to the mall line, and will, at all times during which Lessee is open for retail business, maintain the following temperatures within the Demised Premises and to the mall line:

Heating Season: A prevailing minimum temperature of 70° F with outside temperature ranging to 10° F.

Cooling Season: A prevailing maximum temperature of 78° F and a relative humidity of 50%.

In all service and storage areas, except for the service court, a prevailing minimum temperature of approximately 60° F shall be provided during the heating season, and in the summer adequate ventilation shall be provided. Lessee's heating and cooling systems shall, during such time as Lessee is open for business, be operated in such a manner that the heating and cooling in the all weather mall is not drawn into the Demised Premises. The temperatures required to be maintained in the Demised Premises may, from time to time, be changed by Lessor to be consistent with the temperatures then being maintained in the enclosed, all weather mall.

5.3. *Merchandising*. Lessee will not conduct any auction, fire, bankruptcy or closeout sales or conduct any "Discount House" type of retail business provided, however, that this provision shall not preclude the conduct of periodic seasonal, promotional or clearance sales; will not use or permit the use

of any apparatus, for sound reproduction or transmission or of any musical instrument in such manner that the sounds so reproduced, transmitted or produced shall be directed primarily beyond the interior of the Demised Premises; will keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the interior of the Demised Premises.

Lessee will keep the display windows in the Demised Premises electrically lighted and any electric signs lighted during the period required by the general rules governing the conduct of Lessee and other occupants in the Shopping Center; and Lessee will otherwise conduct its business in accordance with such general rules.

Lessee agrees that it will keep its business to be conducted from the Demised Premises open to the public for a minimum of six (6) days each week (Monday through Saturday) during the hours from 10:00 a.m. to 9:30 p.m. throughout the term hereof unless Lessor shall agree in writing that Lessee may remain open for fewer hours.

• • • • •

5.5. *On Premises Advertising.* Lessee will not place or suffer to be placed, or maintain on the exterior of the Demised Premises, any sign (other than one approved by Lessor), advertising matter or other thing of any kind, and will not place or maintain any decoration, lettering or advertising matter on the glass of any window or door of the Demised Premises without first obtaining Lessor's written approval thereof; and Lessee will maintain such sign, decoration, lettering, advertising matter and other things as may be approved in good condition and repair at all times. No flashing, scintillating or moving signs or lights will be installed by Lessee.

5.6. *Utility Bills.* Lessee shall pay all bills for water, gas, electricity, fuel, light, heat and power furnished to or used by Lessee on or about the Demised Premises, and all sewerage disposal or sewerage service charges for the Demised Premises. If Lessee does not pay the above bills, Lessor may pay the same,

and such payment shall be additional rent for the Demised Premises. Lessor may elect to furnish one or more utility services to Lessee, and, in such event, Lessee shall purchase such services from Lessor and shall pay, as additional rent, the charges for such services by Lessor which, in no event, shall exceed the rates which would be charged for the identical service furnished by the local public utility company. Lessor may discontinue furnishing any service, without obligation other than to connect the Demised Premises to the appropriate public utility.

• • • • •

7. *Merchants' Association*

7.1. *Membership.* Lessee agrees to join and maintain membership in the Shopping Center Merchants' Association and to contribute initially the sum of $..... to promotion. In addition, Lessee shall pay as additional rent, monthly installments of $..... each in advance as Lessee's contributions to the Merchants' Association. Lessee agrees to abide by and comply with all the by-laws, rules and regulations from time to time adopted by the Merchants' Association and to be and remain a member in good standing of the Merchants' Association.

• • • • •

NORTH DEKALB CENTER

NORTH DEKALB CENTER MERCHANTS' ASSOCIATION

"PERMIT"

This will serve as OFFICIAL AUTHORIZATION for the use of the NORTH DEKALB CENTER "CHARITY BOOTH" – at the Woolworth's end of the Mall.

(name of organization) _____ (purpose) _____ (date)

Please post this Permit when using Booth.

NORTH DEKALB CENTER MERCHANTS' ASSOCIATION

60
RESPONDENTS EXHIBIT 19

RESPONDENT EXHIBIT 20

APPLICATION FOR USE OF THE AUDITORIUM

Date.....

Please return to:

North DeKalb Mall Merchants' Association

2026 Lawrenceville Highway

Decatur, Georgia 30033

Phone: 633-9397

Name of Organization.....

Date of Meeting.....

Time of Meeting: from ..... to .....

Special Arrangements Requested: .....

.....

.....

We Ask That You Observe the Following Rules:

1. Under no conditions will alcoholic beverages or gambling be permitted.
2. No commercial venture will take place in the auditorium.
3. No meeting, which the owners of the mall or their agent deems controversial, will be permitted.
4. We cannot be responsible for lost articles. Please take all of your articles with you upon completion of your program.
5. You will be held responsible for any damage to the premises. Please do not attach anything to the walls of the rooms without permission.
6. At the time you request rental, you are requested to inform us as to the number of tables and chairs you require. The room will be set up based on your requirements and additional equipment Will Not Be Available, nor will janitorial services be furnished at any time.

7. All reservations must be accompanied by rental fee, which is refundable for non-use if North DeKalb Mall is notified one week prior to use. Please Make Checks Payable to: North DeKalb Mall.

Contact for Organization.....

Phone: ..... Address: .....

Contact for Auditorium: ..... Phone .....

Fee: .....

Make Check Payable to:
North DeKalb Mall and
mail with application to:

North DeKalb Mall Merchants' Assoc.

2026 Lawrenceville Hwy.

Decatur, Ga. 30033

.....

(Signature for Organization)

RESPONDENT EXHIBIT 23

STATE OF GEORGIA
COUNTY OF FULTON

AFFIDAVIT

George Heald, Sr., being duly sworn, deposes and says:

1. I am the Vice President of Butler's Shoe Corporation of Atlanta, Georgia and am familiar with the facts described below.

2. On or about January 22, 1971, approximately 55 individuals employed by the Company at its warehouse located at 204 Brookwood Drive, N. E., Atlanta, Georgia, represented by Local 315 Retail, Wholesale and Department Store Union, AFL-CIO, commenced a strike against the Company. The strike resulted from a breakdown in the negotiations between the Company and the Union for a new collective bargaining agreement following the expiration of the parties' prior agreement on January 14, 1971. The Union thereafter picketed for a period of approximately 3 days at various of the Company's retail stores in the Atlanta area, including the store located at the North DeKalb Shopping Center, Decatur, Georgia, as well as at the warehouse.

3. The individuals employed at the North DeKalb Shopping Center store are employed at a different location by a different corporation (Butler's of North DeKalb, Inc.) than the warehouse employees. They are also paid on a different basis from a different payroll; are not represented by any labor organization; are separately supervised from the warehouse employees; perform primarily an entirely different function than the warehouse employees; and do not interchange on any basis with the warehouse employees. The North DeKalb Shopping Center store is one of approximately 235 facilities supplied from the warehouse.

4. Following the above-described strike, the Company and the Union entered into a new collective bargaining agreement

covering the warehouse employees which will expire on January 14, 1973.

/s/ G. Heald, Sr.
George Heald, Sr.

Sworn to and subscribed before me this 10th day of January, 1973.

/s/ Lawrence Goufried
Notary Public

My commission expires: .....

Resp. Exh. 24

24

NEWSPAPERS

		Source
DECATUR-DEKALB NEWS (DeKalb County Only)		
A. Total Circulation (Audited)	70,964	SRDS
B. Cost of ½ page ad (500 inch rate) (72 column Inch)	$277.20	Rate Card
C. Cost Per Thousand	$ 3.50	
ATLANTA JOURNAL-CONSTITUTION		
A. 40 Column inch ad Cost	$508.00	Rate Card
B. Total Circulation	473,749	SRDS
C. Cost Per Thousand	$ 1.05	

Resp. Exh. 25.

25

ATLANTA, GA.

Average Week TV Audience Estimates
October 26 - November 22 1972

ATLANTA, GA.

Report Schedule

Report Type

Map Legend

City Location

State Line

METRO AREA

LOCAL DMA

Adjacent DMA

See Table II for NSI Area County Lists

MARKET DATA

TABLE 1—UNIVERSE ESTIMATES-SEPT. 1972

TABLE 2—OWNERSHIP ESTIMATES

TABLE 3—SAMPLE SIZES: HOUSEHOLDS

TABLE 4—REPORTING STANDARDS & RELATED

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(26)

TELEVISION

			Source
WSB-TV	(:30 Spot in late news weeknite)		
A.	Average quarter hour audience (Total)	156,000	Neilsen
B.	Cost of :30 spot	$255.00	Rate Card
C.	Cost per thousand	$ 1.65	

WSB TV 2 (27)

P. O. BOX 4146 ATLANTA, GEORGIA 30302 PHONE: 892-3456

DATE 8/15/72

NAME AGENCY TO

KIRBY

TERMS BACK TO SCHOOL ADVERTISING

SCHEDULE							ACTUAL BROADCAST							RECONCILIATION	
DAY	RATES DROPPED START	RATES DROPPED STOP	TIME ORDERED START	TIME ORDERED STOP	RATE		RUN DAY	RUN DATE	RUN TIME	LENGTH	M/O FOR	PRODUCT/FILM NUMBER	GROSS CHARGES	IDENT	AMOUNT
												Total Adjacent			
TUE										30		-16	73,000		
TUE												-16	313,000		
WED										30		-16	100,000		
WED												-16	118,000		
WED										30		-16	113,000		
WED												-16	156,000		
THU										30		-16	100,000		
THU												-16	152,000		68
THU												-16	352,000		
THU												-16	165,000		
FRI										30		-17	100,000		
FRI												-17	87,000		

GROSS SCHEDULED AMOUNT $

NET RECONCILIATION $

TOTAL $

TOTAL GROSS CHARGES $

AGENCY COMMISSION $

NET CHARGES $

PAY THIS AMOUNT

SOURCE: AC NIELSEN NOV. 1972

WSBO TV2

P. O. BOX 4148, ATLANTA, GEORGIA 30302 PHONE: 897-3456

MAKE PAYMENT TO

DATE

TERMS OF CASH

DAY	DATES ORDERED START	TIME ORDERED STOP	TIME ORDERED START	TIME ORDERED STOP	RATE	ACTUAL BROADCAST RUN DAY	RUN DATE	RUN TIME	LENGTH	M/C FOR	PRODUCT/FILM NUMBER	GROSS CHARGES	RECONCILIATION IDENT	RECONCILIATION AMOUNT
TH	9/1	9/16	11:30P	12:00M	130.		9/16	11:30P	30		TTO-17 332,000	130.		
FRI	9/	9/	11:30P	12:00M	130.		9/17	11:30P	30		TTO-17 313,000	130.		
WED	9/1	9/16	11:30P	12:00M	65.	W	9/16	11:30P	30		TTO-10 43,000	65.		
THU	9/	9/17	11:30P	12:00M	65.	TH	9/17	11:30P	30		TTO-10 43,000	65.		
THU	9/1	9/17	11:30P	12:00M	110.	TH	9/17	11:30P	30		TTO-10 185,000	110.		
									TOTAL		2,767,000			69
									COST PER		1,000 = 3.71			

GROSS SCHEDULED AMOUNT $ 130.

NET RECONCILIATION $ .00

TOTAL $ 130.

WE HEREBY CERTIFY THAT THE TIMES AND DATES ARE IN THE SAME SEQUENCE AS SHOWN ON THE OFFICIAL STATION LOG.

TOTAL GROSS CHARGES $ 130.

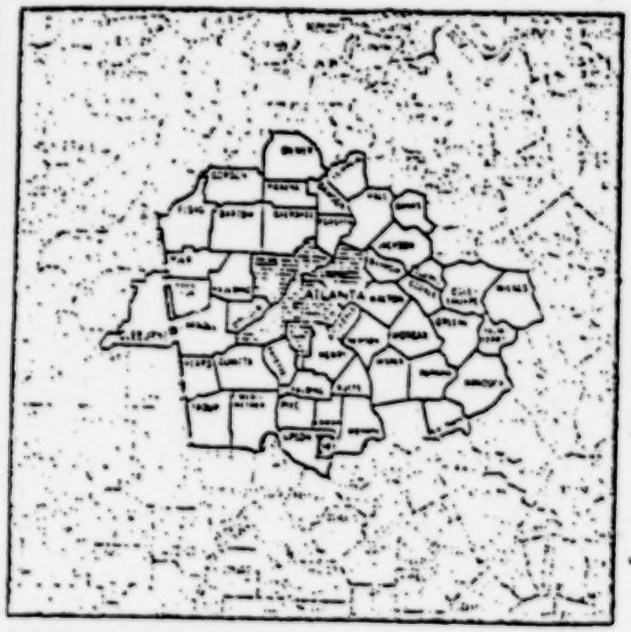
AGENCY COMMISSION $ 19.50

NET CHARGES $ 110.50

PAY THIS AMOUNT

70
Rep. Exh. 28

28



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1. Map—The area in which the listening data were gathered for this survey in this radio market is shown on the map. The Total Survey Area (TSA) of this market is shown in white. The Metro Survey Area (MSA) is shown by cross hatching. (For definitions of TSA and MSA, see Par. 9, 17.)

2. Tabulated Diaries by Sampling Unit—The number of in-tab diaries for each sampling unit is listed.

3. Special Interviewing Techniques—Special interviewing techniques are applied in certain sampling units in some markets. Sampling units in which these techniques have been implemented are indicated: "TR"—Telephone Retrieval; "PR"—Personal Retrieval. (For explanation of these techniques, see Par. 21.)

TABULATED DIARIES BY SAMPLING UNIT

	IN-TAB	COUNTIES IN SAMPLING UNIT
*	96	GWINNETT,GA
*	243	DE KALB,GA
*	44	CLAYTON,GA
*	199	COBB,GA
(TR)*	319	FULTON,GA
	29	BARROW,GA JACKSON,GA WALTON,GA
	29	BLITT,GA GREENE,GA JASPER,GA MORGAN,GA OCONEE,GA PUTNAM,GA
	35	HENRY,GA NEWTON,GA ROCKDALE,GA
	38	CLARKE,GA COLLETON-CAPE,GA
	32	BALDWIN,GA HANCOCK,GA TALIAFERRO,GA WILKES,GA
	29	SPA.DING,GA
	35	LAMAR,GA MERIWETHER,GA PONRDE,GA PIKE,GA UPSON,GA
	32	HEARD,GA TROUP,GA
	29	COWETA,GA FAYETTE,GA
	8	CARROLL,GA
	41	CLEBURNE,AL HARALSON,GA POLK,GA
	25	DOUGLAS,GA PAULDING,GA
	19	BANKS,GA HALL,GA
	66	FLOYD,GA GILMER,GA GORDON,GA
	42	BARTOW,GA CHEROKEE,GA DAWSON,GA FORSYTH,GA LUMPKIN,GA PICKENS,GA
	2,336	TOTAL
	2350	TOTAL "TR" IN-TAB

*METRO SAMPLING UNIT

SOURCE: American Research Bureau

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POPULATION ESTIMATES AND SAMPLE DISTRIBUTION BY SEX-AGE GROUP

		Estimated Population	Estimated Population as Percent of Total Persons 12+	Percent of Unweighted In-Tab Sample	Percent of Weighted In-Tab Sample
TOTAL SURVEY AREA					
Men	18-24	164,888	8.5	5.2	8.5
Men	25-34	194,223	10.1	7.6	10.1
Men	35-49	198,933	10.3	11.7	10.3
Men	50-64	142,603	7.4	7.9	7.4
Men	65+	89,783	3.6	3.7	3.6
Women	18-24	189,868	9.8	6.9	9.8
Women	25-34	198,588	10.3	11.1	10.3
Women	35-49	207,488	10.8	14.7	10.8
Women	50-64	165,783	8.6	10.2	8.6
Women	65+	117,988	5.9	5.8	5.9
Teens	12-17	284,188	14.7	15.3	14.7
Total Persons	12+	1,927,883			
METRO SURVEY AREA					
Men	18-24	138,238	8.7	5.4	8.7
Men	25-34	175,828	11.1	8.9	11.1
Men	35-49	171,698	10.5	13.8	10.5
Men	50-64	78,528	6.8	7.7	6.8
Men	65+	33,438	2.9	2.9	2.9
Women	18-24	219,788	13.4	8.7	13.4
Women	25-34	181,588	11.4	11.1	11.4
Women	35-49	175,428	10.9	15.8	10.9
Women	50-64	91,888	7.8	9.9	7.8
Women	65+	58,388	5.1	3.9	5.1
Teens	12-17	166,788	14.4	15.8	14.4
Total Persons	12+	1,153,888			

DIARY PLACEMENT AND RETURN INFORMATION

Residential Listings in Designated Sample	3,489
Total Contacts (Homes in which telephone was answered)	3,424
Homes in which Diaries Were Placed	3,162
Individuals Who Were Sent a Diary	2,743
Individuals Who Returned a Usable Diary (In-Tab)	1,338

TOTAL TABULATED DIARIES AND EFFECTIVE SAMPLE BASES

	Total Tabulated Diaries	Effective Sample Bases
Total Survey Area	1,338	1,858
Metro Survey Area	895	748

4. Population Estimates—Population estimates and sample distribution by sex-age groups are shown for this market's TSA and MSA. These population estimates are based upon 1970 U.S. Bureau of the Census estimates updated and projected to January 1, 1973 by Market Statistics, Inc., based on data from Sales Management's 1972 "Survey of Buying Power."

Also shown is the percent of usable diaries (in-tab) received from each sex-age group. These percentages are shown as both weighted and unweighted figures. (For an explanation of ARB weighting procedures, see Par. 23.)

5. Diary Placement, Return and Tabulation Data—The accompanying tables show the number of residential listings in the computer-drawn sample, the number of such listings in which the telephone was answered, the number of homes in which diaries were placed, the number of individuals who were sent a diary, the number of individuals who returned a usable diary and the Effective Sample Bases. (For explanation of Effective Sample bases, see Par. 25.)

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RADIO

WSB-RADIO (12 :60 Spot in Tap Plan -Attached)

		Source
A. Average quarter hour audience (Total persons 12 years of age and older in total survey area)		ARB
WSB-AM	486,400	
WSB-FM	131,400	
Total	617,800	
B. Total Cost (12 spots)		
WSB-AM	$783.00	
WSB-FM	216.00	
Total	$999.00	
C. Cost Per Thousand	Less than $1.70	

NATIONAL LABOR RELATIONS BOARD
Case No 10-CA-8923
Resp. OFFICIAL EXHIBIT NO. 29
In the Matter of Scott Hudgens
Date 3/1/23 Witness
By
No. Pages 3

BROADCAST AGREEMENT

WSB-RADIO

1601 WEST PEACHTREE ST., N.E.
ATLANTA, GEORGIA 30309

Member National Association of Broadcasters

DATE January 22, 1973 pa

SALESMAN Frank Stiteler

ACCOUNT NORTH DEKALB MALL

PRODUCT Antique Show

TIME BUYER David Dockel

AGENCY David Dockel & Associates
2026 Lawrenceville Highway

ADDRESS Decatur, Georgia 30033

Date of First Broadcast January 24, 1973 | Date of Last Broadcast January 27, 1973

TYPE OF SERVICE AND SCHEDULE:

60 SECOND ANNOUNCEMENTS

WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
10-12N	10-12N	10-12N	6-10AM
1-3PM	1-3PM	1-3PM	10-12N (2 spots)
3-7:30PM	3-7:30PM	3-7:30PM	

Order Card No. 22 Contract Year 1/24/73 Billing Rate 12 TR Consecutively 1-51 wks

PER PROGRAM	SPECIAL CHARGES	TOTAL WEEKLY COST
AA 0 $103.00 A 0 $ 73.00 B 0 $57.00		$703.00

TOTAL FOR CONTRACT $783.00 XXXX less 15% AGENCY COMMISSION less NO COMMISSION

By [signature]

ADVERTISER OR AGENCY DAVID DOCKEL & ASSOCIATES

By

BROADCAST AGREEMENT

The STEREO Voice of the South

wsb-fm

99.5 Megacycles

1601 WEST PEACHTREE ST., N.E.
ATLANTA, GEORGIA 30309

Member National Association of FM Broadcasters

DATE January 17, 1973

SALESMAN Frank Sinclair

ACCOUNT NORTH DEKALB MALL

PRODUCT [illegible]

TIME BUYER David Ockel

AGENCY David Ockel & Assoc.

ADDRESS 2025 Lawrenceville Highway
Decatur, Ga. 30033

Date of First Broadcast January 24, 1973 | Date of Last Broadcast [illegible]

DAYS OF SERVICE AND SCHEDULE

CO SECOND ANNOUNCEMENTS

WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
6-10AM	6-10AM	6-10AM	6-10AM
10-1PM	10-1PM	10-1PM	10-1PM (2)
3-7PM	3-7PM	3-7PM	

Ord No. 10 Contract Year 1/21/73 Billing Rate 12-TR Consecutively [illegible]

PER BROADCAST	SPECIAL CHARGES	TOTAL WEEKLY COST
$10.00		$216.00

TOTAL FOR CONTRACT $216.00 XXX LESS 15% AGENCY COMMISSION [illegible]

Accepted by WSB-FM

By [signature]

ADVERTISER OR AGENCY DAVID OCKEL & ASSOC.

By [illegible]

Subject to conditions on back hereof and any conditions attached hereto.

[1] BEFORE THE NATIONAL LABOR RELATIONS BOARD

Tenth Region

• • (Caption—10-CA-8823) • •

The above-entitled matter came on for hearing, pursuant to Notice, at 10:00 o'clock, a.m., Before:

Thomas Ricci, Administrative Law Judge.

Appearances:

Lawrence M. Cohen, Esq., Lederer, Fox and Grove, 111 West Washington Street, Chicago, Illinois 60602.

and

C. Dale Harman, Esq., Jones, Bird and Howell, Haas-Howell Building, Atlanta, Georgia 30303, both on behalf of the Respondent, Scott Hudgens.

Guy H. Dickinson, Regional Director, Retail, Wholesale and Department Store Union, AFL-CIO, 1838 Stewart Avenue, S. W., Atlanta, Georgia 30315, appearing on behalf of the Charging Party.

[2] Sylvio L. Mascotti, Esq., Room 710, 730 Peachtree Street, N. E., Atlanta, Georgia 30308, appearing on behalf of the General Counsel.

• • • • •

[4] PROCEEDINGS

Judge Ricci: On the record.

This is a formal hearing before the National Labor Relations Board, the case called Scott Hudgens, 10-CA-8823.

As we all know, this case went to the Court originally on a stipulated set of facts, reached the Circuit Court on the formal documents that everybody has in the litigation up to this point. It is not necessary to make formal exhibits here.

There came a time when the case was back in the Board's hands but a motion to offer testimony was made and granted and the Board directed a hearing. That is why we are here today.

My name is Thomas Ricci (spelling) R-i-c-c-i.

Mr. Mascotti, will you please make your appearance for the General Counsel?

Mr. Mascotti: Sylvio L. Mascotti, Attorney, 730 Peachtree Street, Atlanta, Georgia.

Judge Ricci: Mr. Cohen.

Mr. Cohen: I would like to enter two appearances for the company, Lawrence M. Cohen, of the firm of Lederer (spelling) L-e-d-e-r-e-r, Fox (spelling) F-o-x, and Grove (spelling) G-r-o-v-e, 111 West Washington Street, Chicago, Illinois 60602. And also the appearance of C. Dale Harman, (spelling) H-a-r-m-a-n of the firm of Jones, Bird and Howell, Haas-Howell Building, [5] Atlanta, Georgia 30303.

Judge Ricci: Does anyone else wish to enter an appearance? Go ahead, sir.

Mr. Dickinson: The Union, Charging Party, Guy H. Dickinson, Regional Director, Retail, Wholesale and Department Store Union, AFL-CIO, 1838 Stewart Avenue, Southwest, Atlanta, Georgia 30315.

• • • • •

[7] RONNIE HOLMES was called as a witness, by and on behalf of the General Counsel, and, having been first duly sworn, was examined and testified as follows:

Judge Ricci: What is your full name?

The Witness: Ronnie Lee Holmes.

Judge Ricci: Where do you live?

[8] The Witness: 3680 Gardner Road, Apartment A-12, Atlanta, Georgia.

Direct Examination

Q. (By Mr. Mascotti): Mr. Holmes, speak up good and loud and a little slower so we can all understand you.

A. All right.

Q. Are you presently employed, Mr. Holmes?

A. Yes, sir.

Q. By whom?

A. Butler Shoe Company.

Q. Where?

A. At 204 Brookwood Drive.

Q. Is that a store or warehouse?

A. Warehouse.

Q. You are employed by the Butler Shoe Company at the warehouse?

A. Yes, sir.

Q. Now, how long have you been employed there?

A. Three years.

Q. Do you recall back in January 1971 when the Retail Clerks Union had a dispute with Butler Shoe Company?

A. Yes, sir.

Q. Were you engaged in that labor dispute?

A. Yes, I was.

Q. What did you do in regard to that labor dispute?

[9] A. I was assigned to picket.

Q. Where were you assigned to picket?

A. In North DeKalb Mall.

Q. Who was in North DeKalb Mall that you were instructed to picket?

A. I don't understand the question.

Q. Who was at the Mall, what store?

A. Butler's Shoe Store.

Q. Butler's Shoe Store at the DeKalb Mall?

A. Yes, sir.

Q. Did you go out there to picket?

A. Yes, sir.

Q. Who did you go there with?

A. Roger Long, Tyrone Taylor and Harold Glenn.

Q. What time in the morning did you get there?

A. About 9:30.

Q. Did you start picketing right away?

A. No, sir.

Q. What happened?

A. The store was closed and we decided to wait until it opened before we started to picket, so we sat down on the bench.

Q. Did you have picket signs with you?

A. Yes, sir.

Q. Do you recall what the picket sign read?

[10] A. I couldn't recall all of it, only that Butler Shoe Company is on strike, that's all I could recall on that.

Q. All right. Did anything happen while you were sitting there at the bench?

A. Yes. We were approached by a man that said that we could not picket in this mall because it was private property.

Q. You could or could not?

A. Could not.

Q. Could not picket in the Mall?

A. Yes.

Q. Who was this man, do you know?

A. I don't remember his name.

Q. Did he tell you who he was?

A. Yes, he said his name, he said he was the owner of the shopping mall.

Q. What else did he tell you?

A. He said that we couldn't picket on any side of the mall and we couldn't picket in the parking lot. He said if we wanted to picket we had to go out on the highway to picket.

Q. Did he say that you could picket at the doors of the Mall?

A. No, sir; he didn't say no where on his property, that included everything inside the Mall and outside up to the highway.

Q. Are you acquainted with that North DeKalb Shopping Center?

A. Yes.

[11] Q. Do you know what streets it is between?

A. The only thing I know, it's on the Lawrenceville Highway.

Q. And North DeKalb Street?

A. North DeKalb Street.

Q. Do you know how many entrances there are from the street to the shopping center?

A. No, I don't.

Q. But you know that in order to get to the Mall from Lawrenceville Highway you have to get in from Lawrenceville Highway, at least?

A. Yes.

Q. How far is the Mall from Lawrenceville Highway, would you say?

A. About 500 feet.

Q. 500 feet. After the man told you you could not picket, what else did he say?

A. He said that if we would not leave he would be forced to have us arrested.

Q. Did you leave then, when he threatened to arrest you?

A. No.

Q. What happened?

A. We got in contact with our union representative to see what we should do.

Q. What were you told?

A. We were told to stay there for a while, and then later [12] they told us that we had to leave, you know, go ahead and leave.

Q. Did you at any time picket the Butler's Shoe Store?

A. Yes, for about 15 minutes.

Q. When you were picketing the Butler's Shoe Store, were you walking in front of the door of the Butler's Shoe Store? How long of a way did you picket in front of the store?

A. I'd say about 20 feet.

Q. Was there any disturbance, any violence?

A. No.

Q. Did you see any customers go in the store or out of the store?

A. No.

Q. The store had opened after you started picketing or before you started picketing?

A. It had opened after we started picketing—I mean, before we started picketing it was already open.

Mr. Mascotti: I have no further questions of this witness.

* * * * *

[13] Q. (By Mr. Cohen): Mr. Holmes, how many employees were there at Butler's warehouse that were on strike?

A. On strike?

Q. Yes, in January of 1971.

A. It was the whole company, I would say about 51 men in all.

[14] Q. Did other employees have picket duty at other stores of Butler Shoe Company besides the one at North DeKalb Mall?

A. Yes.

Q. So that people were picketing at a lot of different locations?

A. They were picketing.

Q. Were they picketing at the warehouse too?

A. Yes.

Q. How many employees went to the Butler's Shoe Store at the North DeKalb Mall?

A. It was four assigned to go there.

Q. Was Mr. Roger Long there?

A. Yes.

Q. Was Mr. Harold Glenn there?

A. Yes.

Q. Was Mr. Tyrone Taylor there?

A. Yes.

Q. How about Mr. DeWitt Freeman?

A. Yes, he was also there.

Q. So there were five employees altogether there.

A. They came after we got in contact with our union representative.

Q. So at the time you actually were picketing were there five pickets?

A. There were four pickets at the time we picketed.

[15] Q. Of the—There were five people there at various stages?

A. Yes.

Q. Were there approximately the same number of pickets at the other stores?

A. No, there wasn't, it varied.

Q. I'm sorry.

A. It varied as to how large the store was or how small it was.

Q. From what was the lowest number to what was the largest number?

A. We tried to have at least two.

Q. How many would have the maximum, what would be the largest number you would have?

A. Four, four was the largest number.

Q. Were there also pickets at the warehouse?
A. Yes.
Q. How many pickets were at the warehouse?
A. I couldn't tell you.
Q. An approximation?
A. It would have to be at least four, at least four.
Q. Do you know how many other stores they were picketing at?
A. We picketed all the stores, of Butler's Shoes and Zayre, they picketed all of them.
Q. Would that be all the stores Butler has according to the phone book? One, two, three—nine stores located in the [16] greater Atlanta area, were they picketing all the stores?
A. All of them.
Q. All those nine stores. Do you know how long the picketing went on?
A. Five days, I believe.
Q. Five days. Were the pickets paid in any way by the Union for their services?
A. No.

* * * * *

Q. This was picketing, by the way, that came up because the [17] company would not sign the contract the union wanted, there were negotiations and they broke down?
A. Yes, sir.
Q. There was no agreement on a contract and the union went out on strike?
A. Yes.
Q. And the signs that you carried, as far as you remember, said only Butler Shoe was on strike?
A. There was some more on the sign but that is the only thing I can remember that I had on my sign, the one that I carried.
Q. Have you ever worked at the store at North DeKalb?
A. No.

Q. Has anybody at the warehouse, as far as you know, ever gone over and worked at that store?
A. Not of my knowledge.
Q. Have you ever sold shoes?
A. No.
Q. Have you ever worked in any retail store of Butler Shoe Company?
A. No, only at the warehouse.
Q. Do you know any of the people who worked at the shoe store at that time?
A. At that time?
Q. Yes. Did you know any of the—let's say any employees [18] or the supervisors?
A. At North DeKalb Mall?
Q. Yes.
A. No, I didn't know them.
Q. And none of the supervisors from there ever came over to supervise you in any way, or none of the people working in the store ever came over to supervise you?
A. Not to my knowledge.
Q. You indicated that when you first came over to the store in the North DeKalb Mall you were not picketing right away. Could you tell me what you were doing at that time?
A. Well, like I said, when we arrived at the Mall it was about 9:30 and the store wasn't open, so we sat on the bench to wait until the store opened, so we were just sitting there.
Q. Were you sitting—This is a bench that has been put up in the middle of the aisleways of the Mall?
A. Yes.
Q. You went into the building, when we call it the Mall you are referring to the enclosed building there?
A. Right.
Q. You went into that building and sat down on these benches that were placed there.
A. Right.

Q. Was there anything there besides benches, were there any planters that you remember, or anything else?

[19] A. Any plants?

Q. Yes.

A. I think there was a cafeteria, little cafeteria in the Mall, I believe.

Q. Now, how many people were sitting there at that time?

A. It was, I think, me and Tyrone, Tyrone Taylor and Harold Glenn were sitting there.

Q. Did you have your picket signs with you?

A. Yes, we had them.

Q. They were normal picket signs, poles with a placard at the top of the pole?

A. Yes, sir.

Q. What did you do with those signs?

A. After the strike we disposed of them.

Q. I'm saying what did you do when you were sitting, did you have them sitting next to you or did you put them over next to the store?

A. I had mine, you know, sticking between my legs holding it.

Q. Were some of them put against the window of the store?

A. No, not at the store.

Q. The only time—You either had them next to you or when you were marching up and down?

A. Right.

Q. You had them in your hand at that time. Now, the gentleman, you said after you were there for how long somebody came up to [20] you from the center.

A. Right.

Q. How long had you been there at that time?

A. I'd say about a half an hour.

Q. You had not been actually picketing though?

A. No, sir.

Q. Was the gentleman who came up to you this man who is sitting next to me?

A. Yes, sir.

Mr. Cohen: The record shows Mr. Douglas Ballard, general manager of the center.

Now, did he talk to each person individually or did he talk to you as a group?

The Witness: He was speaking to us as a group.

Q. (By Mr. Cohen): Did Mr. Ballard in that conversation tell you that he was sorry he could not—he sympathized with you, he was sorry he could not help you but this was private property and you were not allowed to picket on that property?

A. Yes.

Q. And did he ask you to leave or did he say you are going to be arrested right away, what was the first thing?

A. He said if we stayed there and picketed he would be forced to have us arrested.

Q. The Butler's Shoe Store is located in a corner of one of the buildings inside the Mall, is that correct?

[21] A. Yes, sir.

Q. Were there pickets marching on both sides of that store?

A. Yes, sir.

Q. And did they picket all the way from the store, at one side of Butler's Shoe Company, down to the corner and then across in front of the frontage of the store to the store on the other side?

A. It was two men on each side.

Q. Two men on each side, and they walked together or did they walk one in front of the other?

A. It was—Well, one was at one end and they met up.

Q. Did they walk—Let's see if we can describe this for the record. You had one person walking one way and another person walking the other way, they were both walking in parallel lines in front of the store.

A. Yes, sir.

Q. So that they sometimes would pass each other and then they would be right abreast of each other?

A. Yes.

Q. And they continued to go up and down in that same path?

A. Yes, sir.

Q. How many entrances were there to the Butler's Store?

A. I can think of one.

Q. Do you remember at the time you were picketing this entrance to the Butler's store, was there any goods for sale outside [22] the store?

A. No, sir.

Q. No shoe display or something of that nature?

A. Not outside the store.

Q. Were there people who tried to go into the store during that time?

A. No, sir.

Q. Nobody tried to go into the store during the time you were picketing?

A. We didn't picket but about 15 minutes.

Q. And during that time no one tried to go into the store?

A. No.

Q. Do you know whether anyone talked to Mr. Ballard after he talked to you at that point?

A. Not to my knowledge.

Q. You don't know if Mr. Long had a telephone conversation with Mr. Ballard later in the day, you would not be aware of that?

A. I would not be aware of it.

Mr. Cohen: I will mark this—

Judge Ricci: Respondent's Exhibit Number 1.

(The document referred to was marked for identification as Respondent's Exhibit Number 1.)

Mr. Cohen: Mr. Holmes, I show you what has been marked for identification as Respondent's Exhibit 1 and ask if that [23] is the Butler's Shoe Store at North DeKalb Mall that we have been talking about?

The Witness: Yes, I believe it is.

Judge Ricci: What did he say?

The Witness: I said I believe that is the one.

Mr. Cohen: Over here on the left hand side are some planters and what looks like an area, is that the area where you were sitting at the time before the picketing started?

The Witness: Yes, sir.

Q. (By Mr. Cohen): And this is a recent photograph, in fact, it was taken yesterday of that store, was there anything different about that store as it looks in this photograph and it looked at the time you actually engaged in the picketing?

A. If there is I can't remember.

Q. As far as you know this is the way it looked at the time you were there?

A. Yes.

Q. Pardon me?

A. Yes.

Mr. Cohen: I would like to offer, please, Respondent's Exhibit 1.

Mr. Mascotti: No objection.

Judge Ricci: I receive into evidence Respondent's Exhibit Number 1, the photograph.

(Respondent's Exhibit 1, heretofore marked for identification, was received in evidence.)

[24] Mr. Cohen: Just so it is clear, when we were talking about marching, you walked all the way from this corner down, two people?

The Witness: Yes.

Q. (By Mr. Cohen): And they would have walked in front of that entrance, which is the only entrance to the Butler's Store?

A. Yes, sir.

Mr. Cohen: I have no further questions.

Judge Ricci: Okay.

Mr. Mascotti: No further questions.

Judge Ricci: Thank you, sir.

(Witness excused.)

Mr. Mascotti: The next witness is Tyrone Taylor. Whereupon,

TYRONE TAYLOR, was called as a witness, by and on behalf of the General Counsel, and, having been first duly sworn, was examined and testified as follows:

Judge Ricci: What is your full name, please?
The Witness: Tyrone Taylor.
Judge Ricci: Where do you live?
The Witness: 973 Stoney Street.

Direct Examination

Q. (By Mr. Mascotti): Mr. Taylor, speak up nice and loud [25] so we can all hear you. Are you presently employed, Mr. Taylor?

A. Yes.
Q. By whom?
A. Butler Shoe Company.
Q. Where are you working?
A. On Brookwood Drive.
Q. And is that a store down there?
A. No, that's the warehouse.
Q. You are working at the warehouse. How long have you worked at Butler Shoe warehouse?
A. Three years.
Q. Do you recall back in January 1971?
A. Yes.
Q. Do you recall a labor dispute between the Retail Clerks, Wholesale, Department Store Union and the company?
A. Yes.
Q. Did you engage in that labor dispute?

A. Yes.
Q. What did you do for that labor dispute?
A. You are talking about like walking at the Mall?
Q. Yes.
A. We—
Q. Did you engage in any picketing?
A. Yes.
Q. Where were you picketing?
[26] A. At South DeKalb.
Q. Where in South DeKalb?
A. Inside the Mall.
Q. Inside the Mall. In front of what store?
A. Butler's Shoe Company.

Mr. Cohen: Just a moment, Mr. Mascotti. Is assume the witness there means the North DeKalb Mall.

The Witness: North DeKalb.
Mr. Mascotti: North DeKalb.
Mr. Cohen: There is a South DeKalb Mall.
Mr. Mascotti: We all know where we are at.
Mr. Cohen: That's what I wanted to make sure.
Mr. Mascotti: I'll ask him again.
Where were you picketing?
The Witness: North DeKalb.

Q. (By Mr. Mascotti): Shopping center?
A. Yes.
Q. In front of what store?
A. Butler Shoe Company.
Q. What time did you get there?
A. I guess maybe around about 9:30 or 10.
Q. Were you alone?
A. No.
Q. Who was with you?
A. Ronnie Holmes, Harold Glenn and myself.
[27] Q. Did you have picket signs?
A. Yes.

Q. What did they say, do you recall?

A. I don't recall, really. You know, we was on strike, you know.

Q. All right. Did each one have a sign?

A. Yes.

Q. Did you start picketing right away when you got there?

A. No.

Q. What happened?

A. It was some fellow, I done forgot what his name was, but he walked up, you know, and said we couldn't picket there because it was private property. And so we asked him, you know, how come, and he said, you know, we could go out on the highway, but we couldn't picket inside the building because, you know, it was private property.

Q. Did he tell you you could picket outside the doors of the enclosed Mall?

A. No.

Q. Did he tell you you could picket on the parking lot?

A. No.

Mr. Cohen: I'm going to object to the leading nature of the questions.

Judge Ricci: Overruled.

Did he tell you anything?

[28] The Witness: He told us we couldn't picket inside the Mall, we couldn't picket out in the parking lot but we would have to go up on the highway and picket. That's the only way we could do it. He said we could walk in the Mall but we couldn't carry the signs, period.

Mr. Mascotti: Are you acquainted with the streets out there at North DeKalb Shopping Center?

The Witness: Yes, I'm kind of acquainted.

Q. (By Mr. Mascotti): What highway runs there?

A. The Druid Hills highway.

Q. What is that known as, Lawrenceville Highway?

A. Yes.

Mr. Cohen: Mr. Mascotti—Could we be off the record a second?

Judge Ricci: Off the record.

(Discussion off the record.)

Judge Ricci: On the record.

Mr. Mascotti: To the best of your knowledge, how far is it from the Lawrenceville Highway to the Mall property, inside the enclosed Mall?

The Witness: I'd say maybe it's about, in my opinion it may be about 500, maybe 570.

Q. (By Mr. Mascotti): From the entrance at North Druid Hills Road to the Mall, that entrance, how far is it?

A. It's about a good—about 495, I'd say.

[29] Q. Did you do any picketing at all that morning?

A. No.

Q. You did not picket at all?

A. Not at all.

Q. After this man came up and told you if you picketed that he threatened to arrest you?

A. Yes.

Q. You left the Mall?

A. Yes.

Q. Where did you go?

A. We went back to the Union Hall.

Q. You did not go back again to the shopping center to picket, you yourself?

A. No.

* * * * *

Cross-Examination

Q. (By Mr. Cohen): Mr. Taylor, have you ever worked in the store for Butler's Shoes at North DeKalb Mall?

A. No.

Q. Have you ever sold shoes?

A. No.

[30] Q. Did you know any of the people who were working at the North DeKalb Store at the time?

A. No.

Q. Did you ever know any of the supervisors in that store?

A. No.

Q. Have you ever worked at any retail store of Butler Shoe Company?

A. No.

Q. Your only job has been at the warehouse?

A. Yes.

Q. What type work do you do?

A. Selector and puller.

Q. You do stock work?

A. Pull stock, yes.

Q. Pull stock. I am going to show you what is already employer's Exhibit 1, is that the Butler Shoe store at North DeKalb Mall?

A. Yes.

Q. Were you sitting over here in front of the entrance, in that area right here (indicating)?

A. No, I was standing.

Q. Where were you standing, can you show us on this picture?

A. I was standing about right along here (indicating).

Q. That is the area between the store and this planter that is over on the side, is that correct?

[31] A. That's correct.

Q. Did you have your picket sign with you at the time?

A. Yes, we had them.

Q. What did you do with the picket sign?

A. We didn't do anything with it.

Q. Did you put them up next—Did any of the employees put the signs on the window of the store?

A. No.

Q. Did you put them on the planters or just carry them in your hand?

A. Had them in our hands.

Q. By the way, is there any difference, this is a current picture of the store. Is there any difference that you can tell between that picture of how the store looks today and how it looked in 1971 when you were there?

A. No, it looks the same. That's the only time I have been out there.

Q. As far as you know this is the way it looked at that time?

A. Yes.

Q. Did you ever picket at any store of the Butler Shoe Company?

A. Yes.

Q. Which one?

A. West End.

* * * * *

[32] Mr. Cohen: Did you ever picket any other stores?

The Witness: Yes.

Q. (By Mr. Cohen): Did you ever receive any compensation for picketing?

A. No, this was the first time.

Q. You were not paid by the union during the time you were picketing?

A. No.

Q. I'm sorry, what store did you say you picketed at?

A. The first time I picketed?

Q. I'm sorrry. What I am talking about is picketing at the time of this 1971 dispute when the contract expired and there was no contract and the union went out on strike. I don't care about any other labor dispute, I am talking about that.

A. You are talking about at that time?

Q. At the time, first you went to North DeKalb Mall. I think you said you did not picket there.

A. No.

Q. You indicated, just so I am clear, in a statement to the Board, that after you came back to the union hall you went back to the North DeKalb Mall and started picketing, is that true or not true?

[33] A. Not true.

Q. You didn't wait at the union hall for about 10 minutes until a union representative called the union lawyer and then went back and picketed the Butler Shoe Store again at the North DeKalb Shopping Center, that is not true?

A. No.

Q. Did you picket at any other store of Butler Shoe Company that same day or the next day?

A. Yes.

Q. Where was that other store?

A. On Stewart Avenue.

Q. That's the Lakewood shopping center?

A. Yes.

Q. Did anyone bother you there or were you allowed to picket there?

A. We were allowed to picket there.

Mr. Cohen: I have no further questions.

Mr. Mascotti: I'd just like to clear up, if it is important at all—

Judge Ricci: I don't think it is important, if you are asking me, but use your own judgment.

Mr. Mascotti: Let me ask one question.

Redirect Examination

Q. (By Mr. Mascotti): I'd like to show you your affidavit, Mr. Taylor, is that your signature?

[34] A. Yes.

Q. When was that made out?

A. 1971.

Q. When?

A. February.

Q. Read this statement here.

Judge Ricci: You asked him.

Mr. Cohen: I didn't try to impeach him.

(Brief pause.)

The Witness: Uh-huh.

Mr. Mascotti: Does that refresh your memory?

The Witness: Yes.

Judge Ricci: What are you going to ask him?

Mr. Mascotti: Did you or did you not go back after you were at the union hall and picket?

The Witness: Yes, we went back.

Q. (By Mr. Mascotti): How long did you picket there?

A. We didn't picket there, period.

Q. After the union hall when you went back, didn't you picket for five or ten minutes?

Judge Ricci: Now wait a minute, be fair to the witness.

Mr. Taylor, the first question is, after you went to the union hall, did you ever go back to the shopping center to picket in front of that store inside the covered Mall?

The Witness: Yes, we went back.

[35] Judge Ricci: You went back for a while?

The Witness: Yes, for a while.

Judge Ricci: Then you left again?

The Witness: Yes.

Judge Ricci: What else do you want to ask him?

Mr. Mascotti: Did you picket at the time you went back?

The Witness: We picketed a little while, and then we left.

Mr. Cohen: I have a question now.

Judge Ricci: Yes, of course.

Recross Examination

Q. (By Mr. Cohen): When you went back to picket there, how long did you spend picketing before you left?

A. About five minutes. Then Roger Long, he come to get us, you know, and then we had to leave.

Q. Did Roger Long come up to you and say he had just talked to somebody and you had to leave?

A. Yes.

Q. Did he tell you what happened in that telephone conversation?

A. No. Not that I can remember.

Q. All he did was say he had a conversation with somebody and you had to leave?

A. Yes.

Q. When you were picketing, were you picketing in front of the entrance to the building, on the side of the building, the [36] Butler Shoe building, Butler Shoe store?

A. I was picketing in front of the store.

Q. Again showing you Employer's Exhibit 1, Respondent's Exhibit 1, you were picketing right in front of that entranceway?

A. Yes.

Q. How many people were picketing there?

A. There were three of us.

Q. Three you you were walking up and down?

A. Uh-huh.

Q. Mr. Holmes who was here before said you were marching along parallel, one was walking one way and one was going the other, is that correct?

A. That's true.

Q. And three of you were marching parallel to the store?

A. There was two on one side and one on the other side.

Q. So two of you were in the front part of the store?

A. Two was on the side and one was on the front part.

Q. Did anybody try to enter the store that you remember?

A. No, not that I can remember.

Q. Did you see any people, customers in the Mall at the time?

A. Yes, I think there was.

Q. But no one tried to go into the Butler's Shoe store?

A. Not at that time.

Mr. Cohen: I have no further questions.

* * * * *

[37] Mr. Mascotti: The next witness, Harold Glenn. Whereupon,

HAROLD GLENN, was called as a witness, by and on behalf of the General Counsel, and, having been first duly sworn, was examined and testified as follows:

Judge Ricci: What is your name?
The Witness: Harold Glenn.
Judge Ricci: What?
The Witness: Harold Glenn, Harold Keller Glenn.
Judge Ricci: Where do you live, sir?
The Witness: 837 Bolton Place.

Direct Examination

Q. (By Mr. Mascotti): Mr. Glenn, speak up nice and loud so we can all hear you, and take your time. Are you presently [38] employed, Mr. Glenn?

A. Yes, sir, Butler's Shoes.

Q. Where?

A. 204 Brookwood Drive.

Q. Is that a store or warehouse?

A. Warehouse.

Q. How long have you been employed at Butler Shoe warehouse?

A. 21 years.

Q. How many?

A. 21 years.

Q. Do you recall back in January of 1971?

A. Yes, sir.

Q. Did you engage in any labor dispute at that time?

A. Yes, sir.
Q. What was your part in the labor dispute?
A. We went on strike for more money.
Q. Did you picket?
A. Yes, sir.
Q. Where did you picket?
A. North DeKalb Mall.
Q. Were you picketing alone or who was with you?
A. Ronnie Holmes, Tyrone Taylor and DeWitt Freeman.
Q. What time of day did you go out there to picket?
A. About 9:30 in the morning.
Q. Did you have picket signs with you?
[39] A. Yes, sir.
Q. Do you recall what they said?
A. Butler Warehouse is on strike, AFL-CIO, Local 315.
Q. When you first got at North DeKalb Mall, did you do any picketing?
A. No, sir; we were sitting down on the bench.
Q. Tell us what happened at this time.
A. We were sitting on the bench waiting for the store to open, so the store never did open so we couldn't picket. Some fellow came up and told us we couldn't picket in the Mall. That we couldn't picket in the parking lot because it was private property, we couldn't picket in the Mall because it was private property, that he owned that property. If we was going to picket, to get up on Lawrenceville Highway.
Q. Did he tell you anything else?
A. That he was going to have us arrested if we didn't leave the building, didn't leave the Mall.
Q. Did you leave the Mall then?
A. Yes, we left the Mall and went back to the union hall and come back.
Q. When you came back to the Mall after being at the Union Hall, what did you do then?
A. We picketed about 30 minutes, I think.

• • • • •

[40] Q. Do you know how far it is from Lawrenceville Highway to the Mall proper?
A. I used to shoot a little golf and I would say it's about 500 feet.
Q. Do you know how far it is from the entrance at North Decatur Road to the Mall property?
Mr. Cohen: North Druid Hills.
Mr. Mascotti: North Druid Hills.
The Witness: About a tenth of a mile.

• • • • •

Cross-Examination

[41] Q. (By Mr. Cohen): Mr. Glenn, have you ever worked at the store in the North DeKalb Mall?
A. No, I ain't.
Q. Have you ever worked in any retail store of Butler Shoe Company?
A. No.
Q. What is your job at the warehouse?
A. Working foreman, lead man.
Q. You do warehouse work?
A. Right.
Q. Did you know in 1971 any of the people working, supervisors or employees, at the retail store in the North DeKalb shopping center?
A. I don't know by name, by face.
Q. Have you ever worked with any of them?
A. No.

• • • • •

[42] Q. You say then somebody came up to you, was that this gentleman sitting here, Mr. Ballard, is this the same man?
A. I can't recall.
Q. Whoever it was came up to you and said you could stay there but you just couldn't picket?

A. He said, you can stay but those signs have got to go

Q. Those were the picket signs?

A. Right.

Q. He didn't tell you you couldn't shop there, did he?

A. No.

Q. Then you said later on you came back and started actually [43] picketing.

A. Right.

Q. Were you picketing in front of the building?

A. We had two on this side and two on the other side.

Q. Two on each side of the building?

A. Right.

Q. And you were marching parallel to each other?

Judge Ricci: On each side of the store.

Mr. Cohen: I'm sorry, on each side of the store, thank you.

The Witness: Each side of the store.

Q. (By Mr. Cohen): Were you marching up and down in front of the entrance?

A. Right.

Q. Did anyone try to enter the store?

A. I don't recall that.

Q. You don't know if somebody did or not?

A. No.

Q. Were there customers in the Mall at the time, other people there?

A. Right.

Q. Now, Mr. Long came up to you later on and said that you had to leave. Told you he had a conversation with someone and you had to leave?

A. Right.

Q. Did he say who he had a conversation with? [44]

A. He had a phone call.

Q. Did he tell you who this phone call was with?

A. He said the owner of the Mall.

Q. He talked to the owner of the Mall?

A. Right.

Q. Did he tell you what his conversation was with the owner of the Mall?

A. He just said, "we'd better go before we get arrested".

Q. That's all he said?

A. (Witness nodded affirmatively.)

• • • • •

Mr. Mascotti: General Counsel has no further witnesses.

• • • • •

[45] Whereupon, DOUGLAS C. BALLARD was called as a witness by and on behalf of the Respondent, and, having been first duly sworn, was examined and testified as follows:

Judge Ricci: Please give your full name and home address for the reporter.

The Witness: Douglas C. Ballard, 4568 Riverwood Circle, Decatur, Georgia 30034.

Direct Examination

Q. (By Mr. Cohen): Mr. Ballard, you are the same Douglas Ballard who was General Manager of North DeKalb Shopping Center who gave a statement to the Board which is Exhibit 4 at the time of the previous consideration of this case?

A. Yes, sir.

Judge Ricci: What statement are you talking about? The [46] stipulation of fact?

Mr. Cohen: Exhibit 4 to the stipulation.

Judge Ricci: The stipulation of fact?

Mr. Cohen: Exhibit to the stipulation.

Judge Ricci: A part of the stipulation?

Mr. Cohen: A part of the stipulation.

Judge Ricci: Okay.

Mr. Cohen: Are you still the manager of North DeKalb Shopping Center?

The Witness: No, sir.

Q. (By Mr. Cohen): When did you stop being the manager?

A. About a week ago, sir.

Mr. Cohen: Would you please mark this, this would be number 2.

Judge Ricci: Off the record.

(Discussion off the record.)

Judge Ricci: On the record.

There has been marked for identification number 2 exhibit of the Respondent, a road map of Atlanta and its environs. On it there is marked in black ink a little square with the letters NDC in the middle of the square, and there are also marked on this map eight letters B in black, or nine, however many there are. Each place where there is a "B" means that at that place on this map the Butler Shoe Company has a retail store. We will note that one of them is near the "NDC". I think that is [47] the one inside the shopping center.

Mr. Cohen: That's correct.

Judge Ricci: Respondent offers this. In order that it will add to the record whatever information appears on this map, on this exhibit, both distances, mileage, location of stores. Do you agree, Mr. Mascotti?

(The document referred to was marked for identification as Respondent's Exhibit 2.)

Mr. Mascotti: I have no objection.

Judge Ricci: That this map faithfully, fairly faithfully reflects where the various retail stores are?

Mr. Mascotti: Yes, sir.

Judge Ricci: It is okay to take it in evidence?

Mr. Mascotti: Right.

Judge Ricci: With that understanding as to the markings on it, I receive into evidence Respondent's Exhibit Number 2.

(The document heretofore marked as Respondent's Exhibit 2 was received in evidence.)

Mr. Cohen: Mr. Ballard, that map shows where the North DeKalb Shopping Center is. Is that a residential, primarily residential or primarily commercial?

The Witness: Primarily residential.

Q. (By Mr. Cohen): And the customers of the North DeKalb Shopping Center come from the entire Atlanta area as shown on this map?

[48] A. Yes, sir.

Q. And does the North DeKalb Shopping Center advertise in the area shown on the map, the Greater Atlanta area?

A. Yes, sir.

Q. The map is Exhibit 2 that was just received. How many acres is North DeKalb Shopping Center?

A. 55.

Q. Now this has been described as a building, a mall building with parking spaces around it. How many different parking spaces are there?

A. 2,640.

Mr. Cohen: May we be off the record?

Judge Ricci: Off the record.

(Discussion off the record.)

Judge Ricci: On the record.

There has been marked for identification an exhibit 3 of the Respondent. It is a plot drawing prepared in some fashion of the shopping center in question, and a close look at it shows that it is an enlargement of the central portion of what is already part of this record as Exhibit 2 attached to the original stipulation of fact. As we look at it we can see because it is exactly like the central portion of that exhibit. What we have in number 3 is a drawing of the buildings standing in 1971 at the time these things happened in the shopping center. Okay?

* * * * *

[49] Judge Ricci: Yes. And I receive into evidence with that understanding Respondent's Exhibit Number 3.

The document referred to, theretofore marked Respondent's Exhibit 3, was received in evidence.)

Mr. Cohen: Mr. Ballard, showing you Exhibit 3, there are various numbers next to sections of that. What are those numbers?

The Witness: These numbers?

Q. (By Mr. Cohen): Yes, 20—

A. Those are store numbers, they are different stores and we just number the stores rather than put the name there.

Q. Number 19 which has a black line around it, is what store?

A. That's Butler's Shoe Store.

Q. There are also circles drawn at four locations. What are those circles?

A. Those are the four main entrances to the shopping center.

[50] Q. To the Mall building and the center?

A. Yes, sir.

Q. There is an open space. What is that open space shown between the circles?

A. That is the Mall section. This is the covered Mall section and the aisleways of the shopping center.

Q. Is there any difference between those, for purposes of the record, between that building as shown in this diagram and as it exists today?

A. Yes, there is.

Q. What is that difference?

A. There is another Mall aisleway section—

Q. Proceeding up number 30?

Judge Ricci: What do you mean Mall highway section?

The Witness: Aisleway.

Judge Ricci: An aisle where the public—you have said that what looks like an open area without any numbers in it in the middle of this is where people walk.

The Witness: Yes.

Judge Ricci: A walking area.

The Witness: Yes, sir.

Judge Ricci: Now you say another one has been built since the time of the events, up along between, say 28 store and 30, those two stores, going outside.

The Witness: Yes, sir.

[51] Mr. Cohen: That was built after the picketing involved here?

The Witness: Yes, sir.

Q. We have not mentioned previously, but how many entrances are there to the parking lot of the shopping center?

A. Five.

Q. What streets do those shopping center entrances appear on?

A. North Druid Hills Road, Lawrenceville Highway.

Q. Those are all five entrances? May I borrow this for a second?

Judge Ricci: Sure.

Mr. Cohen: Looking at Exhibit 2, this is Exhibit 2 attached to the previous stipulation, can you tell us where those entrances are?

The Witness: Birch Road entrance, Oak Tree Drive entrance, Mistletoe Road—

Judge Ricci: Are you saying that what seems to be a straight line, straight street to which Birch Road, Oak Tree Road and Mistletoe Road approach, that long line, that's a highway?

The Witness: These—Mistletoe Road—This is the periphery of the parking lot of North DeKalb Mall. These streets right here lead to North Druid Hills Road.

[52] Judge Ricci: In other words, a person driving on Birch Road, Oak Tree Road or Mistletoe Road enters that street and goes right into the parking lot?

The Witness: That's right.

Judge Ricci: South of it there is the Lawrenceville Highway.

The Witness: Right, this is the main entrance off Lawrenceville Highway, this is a secondary entrance off Lawrenceville Highway.

Mr. Cohen: You first pointed to the middle entrance of the three entrances on Lawrenceville Highway, I'm sorry, on the north side of this diagram.

Judge Ricci: Only two of the three at the bottom of the exhibit, bottom of the sheet where it says Lawrenceville Highway, the two entrances to the right have been used and are used, the little one on the left is not an entrance.

The Witness: That's correct.

Judge Ricci: Go ahead.

Mr. Cohen: There is no direct entrance off North Druid Hills Road?

The Witness: Not directly from North Druid Hills Road into the parking lot, you have to come down Birch Road, Oak Tree Drive or Mistletoe.

Judge Ricci: Where is Druid Hills Road?

The Witness: Right here (indicating).

[53] Mr. Cohen: It's north of the center.

Judge Ricci: Just you and me.

The Witness: Yes.

Judge Ricci: On Exhibit Number 2 it doesn't say Druid Hills Road anywhere, so you tell me, are you saying that it would be off to the right of the exhibit, that a person would go from Druid Hills Road to the parkway either by going along Birch Road or he would go off Druid Hills Road and take Oak Tree Road into the parking lot, and similarly with Mistletoe Road?

The Witness: That's correct, sir.

Judge Ricci: Thank you.

Mr. Cohen: Mr. Ballard, are there any stop signs on Birch Road, Oak Tree Road or Mistletoe Road?

The Witness: Yes, sir, there is a stop sign at each one of them.

Q. (By Mr. Cohen): So that someone coming down Birch Road would have to stop before they entered the parking lot at the center?

A. Yes, sir.

Q. That would also be true of Oak Tree Road and Mistletoe Road?

A. Yes, sir.

Q. They would have to come to a complete stop?

A. Yes, sir.

[54] Q. Is there public property at that location?

A. Yes, sir, there is a right of way.

Q. At each of those different points?

A. Each one.

Q. Where someone could stand?

A. Yes, sir.

Q. Someone coming off Lawrenceville Highway, would they have to make a turn off that highway?

A. Yes, sir.

Q. Would they have to reduce their car to a slower speed—

Judge Ricci: Unless they wanted to hit a pole. When a man makes a turn, Mr. Ballard, he goes slower with his car than he does when he is on the highway?

The Witness: Yes, sir.

Judge Ricci: Of course, we all know that. What do you want to ask him.

Mr. Cohen: I think that is important testimony, Mr. Ricci. I will have further questions on that later.

I do have another exhibit I would like to introduce at this time. Mark this as Exhibit 4.

(The document above referred to was marked for identification as Respondent's Exhibit 4.)

Mr. Cohen: Mr. Ricci, again, if I might follow your suggestion and be off the record.

Judge Ricci: Off the record.

[55] (Discussion off the record.)

Judge Ricci: On the record. Number 4 is another plot plan, that is what Mr. Cohen says. It is an enlargement of the interior walkways inside the covered mall.

Mr. Cohen: As they existed in 1971.

Judge Ricci: Is that correct, Mr. Mascotti?

Mr. Mascotti: I assume, I won't dispute it.

Judge Ricci: I receive into evidence Respondent's Exhibit Number 4.

(The document referred to, heretofore marked Respondent's Exhibit 4, was received in evidence.)

Mr. Cohen: Showing you Exhibit 4, Mr. Ballard, you have marked, or somebody has marked in ink, two rectangles on that diagram. Can you tell us what those are, please?

The Witness: This first—

Q. (By Mr. Cohen): The larger of the two?

A. The larger of the two diagrams, the larger of the two squares is a kiosk.

Q. What is a kiosk?

A. A kiosk is about a 10 by 10 rectangle building or booth made from wood that is used for commercial sales or to demonstrate things, and this sort of thing.

Q. We will have some pictures of kiosks that I will introduce later.

A. Yes, sir.

[56] Judge Ricci: Where they might put Santa Claus on Christmas?

The Witness: Yes, sir, we could use it for that.

Mr. Cohen: It is used for selling items to customers too?

The Witness: Yes, sir, it sure is.

Q. (By Mr. Cohen): Is it leased property?

A. Yes, sir, it sure is.

Q. That tenants of the center have and sell products from?

A. Yes, sir.

Q. What is the smaller little rectangle up near the top of the picture that you have drawn in?

A. That is the charity booth.

Q. Is that also a smaller kiosk?

A. Yes, sir, it's a smaller kiosk.

Q. We will have testimony on what a charity booth is later on, but at this time I would like to have this in evidence.

Judge Ricci: I have received it in evidence, number 4.

Mr. Cohen: Now showing you number 4, Mr. Ballard, when you observed, just so we are clear on this, observed the pickets, at what point on this diagram were they at, if you would like to mark it with a "P" for pickets.

Judge Ricci: Wait a minute.

Mr. Cohen: Maybe you could identify the Butler Shoe Store on this diagram.

Judge Ricci: All right.

[57] The Witness: The first time I saw the pickets they were sitting on a bench—

Judge Ricci: Hold it, off the record.

(Discussion off the record.)

Judge Ricci: On the record.

Mr. Cohen: You have identified the Butler's Shoe Store as "BS". Would you put an "X" where the pickets were when you first observed them in January 1971?

(The Witness complied.)

Judge Ricci: Put a "P" next to that "X", it will mean pickets. Okay.

Mr. Cohen: What was the distance between the pickets at that point and the kiosk that you have marked with the rectangle?

The Witness: 15 feet, approximately.

Q. (By Mr. Cohen): And was that kiosk rented to a customer at the time?

A. I don't recall.

Q. How wide is the aisleway at the center as shown in Exhibit 4?

A. Approximately 40 feet. The main mall is approximately 40 feet, the side malls are approximately 30 feet.

Q. How far is it from, looking at Exhibit 3, from the entrances to the enclosed mall building designated by the circles on that diagram, to the Butler's shoe Store where the pickets were [58] on the occasion in question?

A. Approximately 50 feet.

Q. 50?

A. Yes, sir.

Mr. Mascotti: Where is the 50 feet?

Mr. Cohen: From the entrance at the top of the page to the Butler's Shoe Store.

Judge Ricci: The top of the page, Mr. Cohen, is going to cause confusion. Please, Mr. Witness, on this Exhibit Number 3 there are these four circles, which are the entrances to the covered mall from the parking lot. One of them on Exhibit Number 4 is sort of top left, in the direction—

Mr. Mascotti: Could we mark these 1, 2, 3, 4?

Judge Ricci: We will. One of the circles is in the direction toward where the Butler's Store is, number 19. The Butler's Store, we understand, has two entrances, one opening into the central long mall, and another one to the right of that entrance, right?

The Witness: Yes, sir.

Judge Ricci: The lawyer asked you what is the distance from that swinging door entrance, the circle in the upper left, to the entrance to the Butler's store.

The Witness: Approximately 50 feet.

Judge Ricci: I understand you now.

Mr. Cohen: Is the entire building shown in Exhibit 3 [59] surrounded by a sidewalk of any kind?

The Witness: Yes, sir.

Q. (By Mr. Cohen): Is this a sidewalk that is between the parking area and the building itself?

A. Yes, sir.

Q. What is the width of that sidewalk?

A. Approximately 10 feet.

Q. Is it larger at any particular location?

A. Yes, sir, it is, close to the main entrances it is approximately 25 feet wide.

Q. Those are the four entrances shown on Exhibit 3?

A. Yes, sir.

Judge Ricci: You said all sidewalks, Mr. Ballard, it is all private property. People park—Did you say 600 parking spaces marked on the parking lot?

Mr. Cohen: 2,600.

Judge Ricci: 2,600. A person gets out of his car, he walks into the building, right?

The Witness: Yes, sir.

Judge Ricci: He is walking, when he gets off that area where the concrete is marked for parking cars, he is off the parking area, at least he is off where it is painted on the floor, right?

The Witness: Yes, sir.

Judge Ricci:. He has got to walk the distance to one of [60] the entrances to go into the building.

The Witness: Yes, sir.

Judge Ricci: Is there any difference what he is walking on the first 10 feet, the second 20 feet, the next 5 feet?

The Witness: Sure is.

Judge Ricci: Keep asking, sir.

Mr. Cohen: All right, taking the parking lot, is this a paved parking lot?

The Witness: Yes, sir.

Q. (By Mr. Cohen): It has striped places for cars?

A. Yes, sir.

Q. By the way, who paved and striped that parking lot?

A. Scott Hudgens Company.

Q. Are there lights in the parking lot?

A. Yes, sir.

Q. Who erected those lights?

A. Scott Hudgens Company.

Q. Who maintains the lights?

A. Scott Hudgens Company.

Q. When you leave the parking lot area where cars can traverse and you proceed toward the mall building, you indicated there is a sidewalk there. Is this a sidewalk that would be any different from the sidewalk, public sidewalk outside this building?

A. No, sir, there is no difference other than we maintain [61] the sidewalk at all times. We keep it clean, we pave it, we put it in, this sort of thing.

Q. But it is a cement sidewalk of the same type used on city streets?

A. Yes, sir, it is even raised.

Q. Then you would enter the building through one of these four doors.

A. Yes, sir.

Q. These are swinging doors?

A. Yes, sir.

Q. Are those doors open at all times?

A. No, sir, they are not.

Q. What times would they not be open?

A. After 10 at night and on holidays we open, we unlock them about 12, and they stay open until about 7 in the evening. The other times they are normally open except Sundays and Sundays they are opened about 10 and they close again about 7 in the evening. These doors are locked at 10 and are reopened again at 7 a.m., the next morning.

Q. Can any member of the public enter at any time when it is locked?

A. No, sir, they cannot, not without a pass.

Q. And at the times when it is open someone can enter but they have to open the door physically go through it?

A. Yes, sir.

[62] Q. They are not wide open in the sense that the door of this room is now open so that someone can walk in without taking any physical action.

A. That's correct.

Judge Ricci: Another question about the sidewalk. Mr. Ballard, I assume, correct me if I am wrong, when you speak of sidewalk a little bit elevated perhaps, at least that is an area where the cars cannot go.

The Witness: That's correct.

Judge Ricci: So that while the cars scoot around to find a parking space, if a person who wants to get up into the store wants to walk around up on the sidewalk, he is on the sidewalk in the sense that at least the cars can't get at him.

The Witness: That's correct.

Judge Ricci: Yes, sir.

Mr. Cohen: Thank you. Does Scott Hudgens own and operate the entire shopping center as shown on Exhibit 2 to the stipulation, the large diagram?

The Witness: Yes, sir, with the exception of the Rich's building. Rich's owns their own building.

Q. (By Mr. Cohen): And the various numbered spaces of stores shown on exhibit 3, are those all leased by Scott Hudgens Company?

A. Yes, sir.

Q. Including number 19, the Butler's Shoe Store?

[63] A. Yes, sir.

Q. You also indicated that Butler's—excuse me, Scott Hudgens leases the kiosks. How many kiosks are there?

A. There are three now, sir.

Q. Are these leased to customers in the same way the stores are leased to customers?

A. Yes, sir.

Q. Is the rent any different per square foot for the kiosks than they are for the stores?

A. Yes, sir, it's much higher because the kiosks are sitting in the middle of the mall in the prime retail sales area. People look at these kiosks from all four sides, and people who have things to sell inside it enjoy higher sales than people inside the stores. Therefore, we charge higher rent.

Mr. Cohen: Would you please mark this as Exhibit 5?

(The document referred to was marked for identification as Respondent's Exhibit 5.)

Mr. Cohen: You have indicated that the stores and the kiosks, the people who lease these enter into—lease them from Scott Hudgens Company. Do they sign a common form lease?

The Witness: Yes, sir.

Q. (By Mr. Cohen): Showing you Exhibit 5, is that the lease in question?

A. Yes, sir, it is.

Judge Ricci: What do you mean in question? You said a [64] common form, is this for the kiosk only, or is the same one used for stores—is this the same lease used for the stores and the kiosks?

The Witness: Yes, sir.

Judge Ricci: Was it in use in 1971?

The Witness: Yes, sir, a form of that lease was. Yes, sir, this lease was in use in 1971, January 25, 1971.

Mr. Cohen: I would like to direct your attention to page 6, the last sentence of the first paragraph. Would you read that to yourself, please?

The Witness: Which number was this you said, sir?

Q. (By Mr. Cohen): Pardon me?

A. Which number did you say?

Q. The last paragraph—I'm sorry, the last sentence of the first paragraph appearing on the page, starting with "Lessee will not encumber or obstruct—".

Mr. Mascotti: What page is that?

Mr. Cohen: Page 6.

The Witness: What was your question, sir?

Mr. Cohen: Would you read that to yourself, have you read that?

The Witness: Yes, sir.

Q. (By Mr. Cohen): Could you tell me whether that policy was enforced in January 1971?

A. Yes, sir, it sure was.

[65] Q. Do you know of any exception to that policy that took place during that time?

A. No, sir, I do not.

Q. Would you also read one other paragraph, please, number 55 appearing on page 7, paragraph 55.

(Brief pause.)

Q. Was that policy in effect in 1971?

A. Yes, sir, it was.

Q. Was it enforced, to the best of your knowledge?

A. Yes, sir.

Q. Were there any exceptions made thereto as far as you know?

A. None that I know of.

Mr. Cohen: I would like to offer at this time Respondent's Exhibit 5.

Mr. Mascotti: Judge, I see no material relevancy to this and what are we driving at here. This is a lease between Butler Shoe Company and Scott Hudgens Company, what has that got to do with the Union?

Judge Ricci: I receive into evidence Respondent's Exhibit Number 5.

(The document referred to, heretofore marked Respondent's Exhibit 5, was received in evidence.)

* * * * *

[67] Mr. Cohen: No, I want the witness to say. How was the Mall constructed, can you tell us?

The Witness: The Mall was constructed with storefronts of glass. This glass is put there so that it will make it very easy and very comfortable for a person walking down these

aisleways to look inside a store and to select merchandise from the Mall actually.

Q. (By Mr. Cohen): Is the Mall carpeted in any way?

A. No, sir.

Q. You have indicated, I think one of the diagrams shows, particularly number 4, shows that there are planters, benches, fountains and pools, drinking fountains, contained in the Mall in the common aisleways. Who put those in?

A. Scott Hudgens put those in there, we put them in for the convenience of our customers.

Q. Is there music piped into the Mall building?

A. Yes, sir.

Q. Is the Mall building temperature controlled?

A. Yes, sir, it is air conditioned in the summer and heated in the winter.

Q. Are there restrooms off the aisleway?

A. Yes, sir.

Q. What is the purpose of the temperature control, the air conditioning?

A. The purpose of all the trouble we go to there to provide [68] these things in the Mall is to make sure that our customers have the greatest of ease with shopping, and make it just as convenient as we possibly can. We feel that the more convenient we make it, the conveniences we give them above other sections, above other shopping centers, and things like this, the more customers we'll have. They will enjoy shopping in our shopping center more than they would shopping in other places. Therefore, we put these things in in hopes it will be pleasing to the customer and it will be very rewarding to us based on more money they spend in our shopping center than they would in other places, thereby increasing our profits.

Q. Does the business that individual stores do affect in any way the rent that you receive?

A. Yes, sir, every store there is on a percentage of gross sales for rent calculation, they pay a minimum rent against a

percentage rent. If sales go over a certain point they pay a certain percentage of these sales. So we like to see as high a sales as possible in each store in that shopping center.

Mr. Cohen: May we be off the record a second?

Judge Ricci: Off the record.

(Discussion off the record.)

Judge Ricci: On the record.

Mr. Cohen: I am going to show you various exhibits that have been marked, I am showing you first what has been marked as Respondent's Exhibit Number 18, can you tell me what that is, [69] please?

(The documents above referred to were marked for identification as Respondent's Exs. 6 through 18, inclusive)

The Witness: That's a commercial kiosk.

Q. (By Mr. Cohen): That commercial kiosk has been leased to a tenant who sells photographs?

A. He paints portraits for a living, so we have leased it to him.

Q. And he signed one of the lease agreements we talked about?

A. Yes, sir, I think so.

Q. Were there kiosks of the same type in 1971?

A. Yes, sir, there was one of them.

Q. Now there are three?

A. There are three, right.

Q. Showing you number 17, can you tell me what that is?

A. That's the main entrance to the Woolworth store.

Q. Did it appear substantially in this same form in 1971?

A. Yes, sir.

Q. Showing you number 16, can you tell us what that is, please?

A. That's the main entrance into the Rich's store from the Mall.

Q. And number 15, is that a similar photograph?

A. Yes, sir.

Q. And number 14?

A. Yes, sir, it sure is.

[70] Q. Did the entrance to the Rich's store appear in substantially the same form in 1971?

A. Yes, sir.

Judge Ricci: Don't stop.

Mr. Cohen: Showing you number 13, would you tell us what that is, please?

The Witness: That's a picture of the Mall from the Rich's end going toward Butler Shoe Store and the Woolworth store.

Q. (By Mr. Cohen): Looking down the mall?

A. Looking down the Mall.

Q. And is that view substantially as it would have been in 1971?

A. Yes, sir, the building itself is. We have changed planters and this sort of thing.

Q. Substantially the same?

A. Substantially the same thing.

Q. Showing you number 12, will you tell us what that is, please?

A. That is a carousel that kids ride in the mall.

Q. Who put that up?

A. Scott Hudgens Company.

Q. That is located outside the Woolworth store?

A. Yes, sir.

Q. Showing you number 11, would you tell us what this is, [71] please?

A. That's the sign posted on all of the doors, or painted on all the windows to the entrances to the shopping center.

Q. Those are the four main entrances you have talked about?

A. That's right.

Q. This is the door you have talked about?

A. Yes, sir.

Q. And the lock shown there?

A. The lock and the handles.

Q. Is that the way the four doors appeared in 1971?

A. Yes, sir.

Q. Was that same sign on the door at that time?

A. Yes, sir, the same sign.

Q. Showing you number 10, will you tell us what that is, please?

A. This is the charity booth.

Q. I'll have you tell us what the charity booth is in a second. The charity booth is the smaller of the rectangles on Exhibit Number 4?

A. Yes, sir.

Q. Showing you Exhibit Number 9, would you tell us what that is, please?

A. This is a shot through the corner of the Chic-File-A store.

Q. Which is one of the tenant stores?

A. Yes, sir.

[72] Q. And on Exhibit number 3, that's the present 3, where would that be? Just tell us.

A. At the corner of the number 28 store.

Q. Fronting on this new aisleway that has just been constructed?

A. Yes, sir, it fronts on the old mall and the new mall.

Q. Showing you number 6, will you tell us what that is, please?

A. That's a picture of the main entrance of the Chateau Pastry Shop, store inside the shopping center. It is also a corner store and shows that you can walk through, walk from the mall through this store back to the mall, and if you did not look up you never would know you had left the mall.

Q. Do customers actually go through either Chic-Fil-A, as shown in Number 8, or the Chateau Pastry Shop and cut across those stores to get from one mall aisleway to the other?

A. Yes, sir, they sure do.

Q. Where is Chateau Pastry Shop shown on Exhibit 3, what is the number?

A. Number 43.

Q. And is that as it existed substantially in 1971?

A. Yes, sir.

Q. Showing you number 7, will you tell us what that is, please?

A. That is the main entrance to the Thompson-Boland-Lee Store.

Q. What number is that on Exhibit 3?

A. That's number 36.

[73] Q. 36. Is that how it substantially looked in 1971?

A. Yes, sir.

Q. Showing you Exhibit 8, tell us what that is, please.

A. That is the main entrance into the Regenstein Store, North DeKalb Mall.

Q. Is that how it looked in 1971?

A. Yes, sir.

Q. Where is that store located on Exhibit 3?

A. It's number 29.

Q. In Exhibit Number 7, and I think number 1, the picture of the Butler's Store already in evidence, are displays outside the store, the actual entrance to the store itself, is that a common or infrequent situation that a store will have that kind of display?

A. Yes, sir, it's common.

Q. Why do stores have those kinds of displays outside the store?

A. They promote sales items and put high impulse items out there so that when a customer is walking along they will see this and will immediately pick it up and go inside and buy it. This is a very good selling area right there.

Judge Ricci: I notice in that picture you are talking about, number 1, you are speaking about that display inside the building line, as it were, in the entrance to the Butler's Shoes, right?

[74] The Witness: Yes, sir.

Judge Ricci: They can't put anything out in the general quarters where people have to walk, can they?

The Witness: No, sir.

Judge Ricci: That would be contrary to the lease which says you cannot obstruct the walkways.

The Witness: That's right.

Mr. Cohen: I would like to offer at this time, Mr. Examiner, Exhibit 8—I'm sorry, 6 through 18.

Judge Ricci: 6 through 18?

Mr. Cohen: That is correct.

Judge Ricci: Okay.

Mr. Cohen: Which are the photographs.

Mr. Mascotti: Store in the Mall as of 1973, right?

Judge Ricci: And also pretty much what they were like in '71, whatever the witness said. I receive into evidence Respondent's Exhibits 6 through 18.

(The documents referred to, heretofore marked Respondent's 6 through 18, were received in evidence.)

Mr. Cohen: Is there a maintenance staff that maintains the mall building?

The Witness: Yes, there sure is. The Scott Hudgens Company hire and maintain people out at the shopping center just about all the time, we keep at least four maintenance men to keep the place clean and operating smoothly. We keep a security force [75] there in the afternoons and evenings to protect and patrol our property. All this is paid for by Scott Hudgens Company.

Q. (By Mr. Cohen): Do we have a man who is in charge of maintenance and security of the Mall building?

A. Yes, sir.

Q. What is his name?

A. Mr. L. E. Rogers.

Q. I take it that this shopping center pays taxes on the mall building.

A. Yes, sir, they sure do.

Q. Does it have insurance to cover the mall building?

A. Yes, sir.

Q. Will you tell us what the total cost approximately annually is to maintain the common area, not the tenant store areas but the common areas of the shopping center, North DeKalb Shopping Center, as far as taxes, insurance and other costs?

A. We break this down into two sections, as far as maintenance costs go, we have a mall maintenance charge which takes care of your inside common areas. This cost runs about $50,000 a year. Taking care of the parking lot which includes striping and lighting and policing costs approximately $45,000 a year. In addition to that, we pay $85,000 a year in taxes on the building and the parking lot.

Q. Those are the costs involved in the common area of the building?

[76] A. Yes, sir.

Q. Do the tenants share those costs in any way with Scott Hudgens?

A. Yes, sir, they sure do. We are reimbursed to a certain extent by what we call maintenance fees. These maintenance fees are pro rata in that they pay so much per square foot in relation to the total shopping center. They are limited on their expense to usually 25 or 35 cents a square foot. We have our maintenance crew perform these services and run up these bills and this sort of thing, and then at the end of each quarter we bill this maintenance cost back to the tenant. However, the tenant is limited in that they only pay like 25-cents a square foot maximum. These costs can go over and they do go over and when they go over they start getting into the landlord's pocketbook rather heavily.

Q. Then they would be absorbed by Scott Hudgens Company?

A. They would be absorbed by Scott Hudgens. Scott Hudgens absorbs approximately $25,000 of this cost in 1972.

Q. I'm going to ask you some questions about policy and I would like to direct your attention to 1971, January of that

year, the time this case arose. At that time did North DeKalb shopping center have any policy against handbilling, passing out literature on the shopping center?

A. Yes, sir, we did. We didn't allow anyone to pass out literature on the shopping center or the common areas of the [77] mall.

Q. Did you have any policy against people marching up and down with placards at that time?

A. Yes, sir, we sure did.

Q. What was that policy?

A. That policy was not to allow anyone to march up and down with placards or any other shape or form of advertising in the mall and the parking lot.

Q. Was this policy enforced uniformly?

A. Yes, sir, it sure was.

Q. It was not directed only against unions?

A. No, sir, we even went to the extent, especially during the political campaigns, we have a lot of politicians out there that want to politic on the mall, they try to walk up and down the mall handing out literature and this sort of thing. We ask them to leave. We have asked people such as Senator Gambrell, Commissioner Clark Harrison, Senator Nunn—

Mr. Mascotti: Wait a minute, Senator Nunn wasn't running in '71.

Judge Ricci: Well, there were some other very important persons in public life.

Mr. Cohen: He's testifying this is the policy, all these events occurred.

Judge Ricci: That's perfectly all right, don't worry about it.

[78] The Witness: We had another case where we actually had a person arrested for distributing leaflets.

Judge Ricci: Of course, the Government is not making it official that it was a discriminatory rule, right?

Mr. Mascotti: Right.

Judge Ricci: Keep asking whatever you went.

Mr. Cohen: Did these groups every try and come out to the center during this period?

The Witness: Yes, sir, peace groups, political, church, religious, every group you can imagine has tried to do something on that mall without permission, and we have asked them to leave.

Judge Ricci: What was the name of the case that involved the Viet Nam—

The Witness: Tanner and Lloyd.

Mr. Mascotti: Lloyd and Tanner.

Judge Ricci: Was there ever a Jehovah's Witness that came in there and tried to give a sermon, what was the name of that case?

Mr. Mascotti: Marsh.

Judge Ricci: Okay, let's go.

Mr. Cohen: Did you have representatives of a Baptist Church come out to the property?

The Witness: Yes, sir, we sure did.

Judge Ricci: Did you ask them to leave?

[79] The Witness: Yes.

Judge Ricci: You know, Mr. Cohen, I have been very nice and I have let you ask everything. In fact, I came determined to listen to anything anybody said. But don't go through all the religious denominations.

Mr. Cohen: I don't intend to.

How many requests do you receive from groups seeking to use the Mall each week or each month?

The Witness: About 15 to 25 a week, probably, approximately.

Q. (By Mr. Cohen): When these requests come in, is there any procedure for handling them?

A. Yes, sir. Either myself, Mr. Rogers or Jacqueline Reynolds who works for a promotional advertising company called David Bockle and Associates, receives a call. After we receive a call we ask them why they want to use this particular, what their purpose is for wanting to use the mall. So then they will go into a lengthy conversation, usually stating these things, and then we will explain our position and that we allow charitable organizations and civic groups to use our charity booth to sell homemade handmade items only. Or to, you know, to raise funds for different groups, and this sort of thing.

Q. Let's take this charity booth, if it is a civic group saying they want to sell, say cookies, candy and cake and so on, what arrangements are then made?

[80] A. All right. Provided that we have the booth at the time that they want it and it has not already been taken up by a prior commitment from another group, and that sort of thing, we will ask them to come down and to get a permit to use this booth. We fill it out for them, we give one to Mr. Rogers and we keep one ourself for the files, and we will give them one, and they have to have this permit with them and display it on this kiosk, on this charity booth to be able to stay there and sell their goods or raise their funds.

Mr. Cohen: Would you mark this, please, number 19?

The Witness: If these people don't have a permit we ask them to leave.

(The document above referred to was marked for identification as Respondent's Exhibit 19.)

Mr. Cohen: Showing you Respondent's Exhibit 19, is that the permit you just testified about?

The Witness: Yes, sir.

Q. (By Mr. Cohen): That would be initialed by someone from the Merchants Association?

A. Yes, sir, it sure would be.

Q. And whoever is using the charity booth?

A. That's correct.

Q. As I understand, it is your testimony that the charity booth would only be allowed to be used by a civic group selling a homemade item or an item that would not compete with anything [81] sold in the center.

A. That's correct.

Q. Would it be used for any other purpose?

A. No, sir.

Mr. Cohen: I would offer Number 19 at this point.

Judge Ricci: I take into evidence number 19.

(The document referred to, heretofore marked Respondent's Exhibit 19, was received in evidence.)

Mr. Cohen: Is there any restriction on the activities that may be engaged in in the charity booth?

The Witness: Yes, sir, they have to perform all their services and sales behind the kiosk. They cannot go soliciting up and down the mall, hawking, pulling people off the mall there and directing them toward this booth. They have to do everything behind the booth and people have to come to that booth to buy or to look at what they have. They cannot go out and solicit in the mall.

Q. (By Mr. Cohen): Is there a sign erected for that purpose?

A. Yes, sir, there sure is, there is one inside the charity booth.

Mr. Cohen: Can we go off the record?

Judge Ricci: Off the record.

(Discussion off the record.)

Judge Ricci: On the record. We have a stipulation of fact achieved amicably to avoid an exhibit that will be too [82] cumbersome and difficult to duplicate, it is stipulated that whenever the charity booth of which the witness has been talking is actually being used by the type of occupant that the witness described, then a written notice, very clear, and maybe 6 inches by a foot and a half, is placed in plain view of the people inside the booth as a constant reminder to them of the limitation upon their activity and that sign reads as follows:

"Confine activity to charity booth. No sales or solicitation outside of booth".

That's what it says on that constant notice. Do you agree Mr. Mascotti with this stipulation of fact proposed by Mr. Cohen?

Mr. Mascotti: Correct.

Judge Ricci: Have I stated it correctly?

Mr. Cohen: You have.

Judge Ricci: It is now a stipulation of acts on this record.

Mr. Cohen: Apart from the charity booth is there any other facility of the North DeKalb Shopping Center that can be used by civic groups?

The Witness: Yes, sir, there is an auditorium.

Q. (By Mr. Cohen): I am showing you Exhibit Number 3, where is that auditorium located?

A. It is behind Store Number 4.

Q. It does not have access to the mall itself?

[83] A. Yes, sir, it does have access to the mall.

Q. How do you get there from the mall?

A. Through a corridor.

Q. It does not have an entrance actually facing on the mall.

A. No, sir, it does not.

Judge Ricci: How do you get in—Oh, a corridor some way. Anyhow behind Store number 4 is an auditorium?

The Witness: That's right.

Judge Ricci: Good.

Mr. Cohen: To what groups is that auditorium, what groups have access to that auditorium?

The Witness: Any group that you might want, commercial, civil, anything like that, religious group could use that auditorium. They have to make prior arrangements through the same people I discussed just a while ago for it. If it is a group of people that are trying to get people to buy stock or trying to explain why they should buy land or something like this, what we call a commercial venture, then we are compensated for the use of this auditorium.

Q. (By Mr. Cohen): You charge rent for the use of the auditorium?

A. Yes, sir. If it is only for a garden club meeting or just a group of people there in the community, or something like that that want to go in and have a meeting there, then we will let them use it free of charge.

Q. Do the people who use the auditorium have to sign an [84] agreement of any kind?

A. Yes, sir,they sure do.

Mr. Cohen: Would you mark this, please, Exhibit 20?

(The document above referred to was marked for identification as Respondent's Exhibit 20.)

Mr. Cohen: Showing you Exhibit 20, is this the agreement you just testified on?

The Witness: Yes, sir, it is.

Q. (By Mr. Cohen): Was this in use in 1971?

A. Yes, sir.

Q. This has a number of conditions listed, rules I should say.

A. Yes, sir.

Q. If someone using the auditorium were violating any of these rules, what would occur?

A. We would advise them immediately and tell them to be in compliance with the rules. If they did not—

Judge Ricci: Throw them out? I mean, not by calling the Police or threatening arrest, I understand, but you would request that they either leave or comply with the rules.

The Witness: I did not say that.

Mr. Cohen: Tell us what you would do then.

The Witness: Okay: I would tell them, you know, to get with it and get with the rules there, and try to obey them. If they did not, we would ask them to leave. Then if they [85] did not leave, we would have them arrested and taken away.

Mr. Cohen: I would offer Exhibit 20.

Judge Ricci: I didn't hear any objection. I receive number 20 into evidence.

(The document referred to, heretofore marked Respondent's Exhibit 20, was received in evidence.)

Mr. Cohen: Mr. Billard, would anyone be permitted to engage in any non-commercial activity not authorized or—Would any group be allowed, charitable group, religious group, political group, at any time be allowed to engage in any activities on the shopping center premises except in the kiosk or in the auditorium?

The Witness: No one with one exception. We have made one for the Salvation Army and the Salvation Army only, and that is that we allow them to go outside using the sidewalk adjoining the main entrances to the shopping center, the four main entrances to the shopping center—

Q. (By Mr. Cohen): To the shopping center or to the mall?

A. To the mall, excuse me. To the mall, and they can stand there but they cannot solicit by hawking, by grabbing people and this sort of thing and pulling them over. All they can do is stand over with their kettles. And if somebody has to walk over and put money in there, then that's fine. We have made one exception with them. One day Mr. Rogers let one of them take his clacker out, required that he take his clacker [86] out of his bell, it was very cold, very wet and raining and snowing and that sort of thing, and he allowed the man to stand just inside the mall without a clacker in his thing, and without soliciting whatsoever. All he was doing was being human about the thing and letting him be out of the weather.

Q. Apart from that one occasion, has any other group been allowed inside the mall?

A. No, sir.

Q. And apart from the Salvation Army outside the mall has any other group been allowed there?

A. No, sir.

Q. That happens, I take it, only once a year.

A. That's correct, during Christmas season.

• • • • •

Mr. Cohen: Mr. Ballard, you have testified about this policy of not permitting anyone with this one exception for [87] the Salvation Army, to use center premises unless they are in the kiosk or in the auditorium. Would you tell us what the reason is for that policy?

The Witness: Yes, sir. Everything we do at North DeKalb Mall, we try to make it as convenient, as comfortable, as pleasing as we possibly can for our customers. The reason we do this is because it is our center, we do it also, we go to great lengths to make sure people come to North DeKalb and shop rather than go to another competing center.

Judge Ricci: He told you he wanted them to be comfortable, be in a spending mood, nice, they pipe in good music and all to make them nice and generous. Why is he telling us again?

Mr. Cohen: What would there be about people engaged in these activities in the mall that would detract from that purpose?

Judge Ricci: Oh, why picketing would destroy business? You're right, ask him.

Mr. Cohen: Not picketing, why do you have that policy against handbilling and solicitation and these other activities, what is the reason for that particular policy?

The Witness: We feel that would just distract the customers and keep her away from a particular place. She doesn't want to go back because she gets one of these handbills. They take these handbills, they throw them down causing us more maintenance costs. If there is some handbill there [88] that somebody thinks is, you know, there could be a feedback, it may start a ruckus, increasing our security cost and this sort of thing. All we want is a nice, clean, comfortable mall for our customers to walk down and view unobstructed any storefront, any piece of merchandise, anything they may want to buy.

That is our primary purpose for having that shopping center, along with making a profit. And this is the only reason we have the shopping center, and these are the reasons that we enforce the rules as stringently as we do.

Q. (By Mr. Cohen): Why do you have the kiosks and the auditorium there?

A. We have that there to accommodate people in the surrounding community. We realize that sometimes they don't have places to go and hold a large meeting or something like that. So we do this, making it even more convenient for people to come to north DeKalb Mall. It's the draw. You know, they bring themselves, their frends and all, and by chance while one of them is walking around out there, he may buy something. Every dollar counts and every dollar puts money in our pocket, and that is what we are interested in.

Q. Would you permit a group from outside the Atlanta area to use the kiosks or the auditorium?

A. No, sir.

Q. You indicated that you have enforced this policy of yours. Have you ever arrested anyone for violating this policy? [89] A. Yes, sir, we sure have. We have a case now that is being decided on a Miss Becker. She came out along with two or three of her friends and she was going to pass out anti-war literature—

Judge Ricci: I'm going to have to stop it.

Mr. Cohen: I would like you to take judicial notice of the case involving this very same center.

Judge Ricci: He says he had somebody arrested, I believe it.

Mr. Cohen: It is a case in the United States Supreme Court involving this shopping center. I just want to refer you to it.

Judge Ricci: The United States Supreme Court?

Mr. Cohen: The United States Supreme Court.

Judge Ricci: Put it down.

Mr. Cohen: I just want to put the citation in the record, sir.

Judge Ricci: Off the record.

(Discussion off the record.)

Judge Ricci: On the record.

Mr. Cohen: I would like for you to take judicial notice of the case of Richard Guy Steffel (spelling) S-t-e-f-f-e-l, v. John R. Thompson, opinion by First United States District Court for the Northern District of Georgia, which is reported in 334 Fed. Sup. 1386, 1971.

[90] Judge Ricci: 1386.

Mr. Cohen: Decision of United States Court of Appeals reported at 459 Fed. 2nd 919.

Judge Ricci: 919.

Mr. Cohen: 919, 1972. There was also a decision and rehearing by the Court in Bond [sic], I don't have the citation.

Judge Ricci: The same Circuit?

Mr. Cohen: Same Circuit and it is now pending before the United States Supreme Court on a petition for cert. that has not been acted upon yet, number 725581 which involves—the reason I ask you to take judicial notice of it, it involves one of the defendants in the case of Scott Hudgens and the incident involves is someone who was arrested for coming on to the North DeKalb Shopping Center to engage in protest against the Viet Nam War and against the sale of lettuce at one of the stores in the center.

Judge Ricci: Okay.

Mr. Cohen: The facts contained therein are filed. I also ask, at the same time, maybe I can place it into evidence, of another pending case involving the North DeKalb Shopping Center. It was recently filed, entitled Scott Hudgens v. Local 315, Retail, Wholesale and Department Store—

Judge Ricci: Local 315?

Mr. Cohen: 315, the Charging Party in this case. The Atlanta Mobilization Committee and Richard Guy Steffel, [91] Number B-81424, in the Superior Court for the County of

Fulton Georgia, which asks for a declaratory Judgment to prohibit the union involved in this case, as well as others, from coming onto the shopping center. The declaratory judgment that such conduct would be a violation of the Georgia Trespass Law, Title 26 Georgia Code Annotated, Section 26-1503. I have the case, I can put it in evidence.

Judge Ricci: Has there been a decision? You want to make it an exhibit?

Mr. Cohen: Yes.

Judge Ricci: Number 21 of the Respondent.

(The document referred to was marked for identification as Respondent's Exhibit 21.)

Mr. Cohen: I only have one copy.

Judge Ricci: Okay to take it, it's argument?

Mr. Mascotti: Yes.

Judge Ricci: I receive into evidence the Complaint, Respondent's Exhibit Number 21.

(The document referred to, heretofore marked Respondent's Exhibit 21, was received in evidence.)

* * * * *

[93] Q. (By Mr. Cohen): I'll ask you to look at, Mr. Ballard, the statement you gave to Mr. Mascotti which was Exhibit 4 to the stipulation of fact. That indicates that you had on January 22nd, 1971 two conversations with pickets. The first of which there has been some testimony already today personally you had with several of the pickets at the center. You indicate in here that you also talked to pickets on the telephone.

A. Yes, sir.

Q. I would like to ask you about that conversation. Approximately how long after you talked to the pickets in person did that conversation on the telephone occur.

A. About an hour or two hours.

Q. Did you call the picket or did the picket call you?

A. He called me.

Q. Did you know the name of the picket?

A. No, I do not.

Q. A man. There is also a statement which is Exhibit 3 from a picket by the name of Roger Long. Do you remember whether [94] that was the person you talked to or not?

A. No, I do not.

Q. It could have been that person?

A. That is correct.

Q. Now, when the person called you on the telephone did he identify himself in any way?

A. Yes, he identified himself. I'm not sure about whether he called his own name and this sort of thing or not, but he identified himself by saying that he wanted to picket on the mall. When he said this I told him, you know, that we didn't allow people to picket on the mall, and he said well, he was going to do it anyway. And I said, "We don't allow people to picket on the mall. They have to be outside on the sidewalk or either out at North Druid Hills or Lawrenceville Highway on the right of way, one or the other". You know, "You just don't picket on my mall".

Q. When you said sidewalk did you identify that sidewalk in any way?

A. I said the outside sidewalk joining the building, you know, the building sidewalk or the sidewalk at the mall, the mall sidewalk.

Q. So you made it clear that it was the sidewalk that surrounds the mall building?

A. Yes, sir, I would have thought it would have been clear, yes, sir.

• • • • •

[95] Mr. Cohen: So if we are on the record, you had a conversation with a man who indicated that he was going to picket at North DeKalb Center Mall. Will you tell me what you replied when he asked to picket on the center mall?

The Witness: I told him he could not picket on the mall itself, he would have to be outside on the sidewalk of the building, or either on North Druid Hills Road or Lawrenceville Highway, on public property thereon the right of way.

Q. (By Mr. Cohen): What did he respond at that point, if anything?

A. I don't remember.

[96] Q. Did he respond in any way?

A. In that he said that he was going to picket anyway, is that what you asked me?

Q. Is that what he said? If that is what he said.

A. I think that is what he said, I'm not sure, you know, I'd rather not—

Q. Did you say anything else that you recall?

A. Not that I recall.

Q. Is there anything else to the conversation that you recall?

A. No, sir.

Mr. Cohen: May we go off the record a second?

Judge Ricci: Off the record.

(Discussion off the record.)

Judge Ricci: On the record.

There has been marked Respondent's Exhibit Number 22, a map of the county in which this shopping center is located, and there is marked on the map in blue ink, in the very center, a square with "NDC", that's the shopping center we have been talking about. There has also been marked on the map a little lower down, one to the right and one to the left lower down, two other squares with the letters "Public Bldg." on each of them. The purpose of the exhibit by the Respondent is to show that this is away from the shopping center, where they are and were at the time, I guess, certain public buildings. Now, [97] to start with, do you agree this is a reliable statement?

Mr. Mascotti: Yes, I do.

(The document above referred to was marked for identification as Respondent's Exhibit 22.)

Judge Ricci: Mr. Cohen?

Mr. Cohen: Yes.

Judge Ricci: The company offers it?

Mr. Cohen: I may have some questions on it.

Judge Ricci: Of course, but up to this moment, the two squares being buildings, public buildings, and the little square means the shopping center.

Mr. Cohen: That's correct.

Judge Ricci: I receive into evidence Respondent's Exhibit Number 22. Now when he talks we will know what he is taking about.

(The document referred to, heretofore marked Respondent's Exhibit 22, was received in evidence.)

Mr. Cohen: Showing you Respondent's Exhibit 22, I'm taking first of all the public buildings that are shown, I-285, will you tell us what that public building is?

The Witness: Yes, sir; that public building has the DeKalb Police Station, DeKalb maintenance people and DeKalb office building. It also has the DeKalb County incinerator, and this sort of thing.

Judge Ricci: An incinerator? Mr. Cohen, how did the [98] incinerator get into this case?

Mr. Cohen: I didn't know there was an incinerator there.

Judge Ricci: Go ahead, ask him some more.

The Witness: Okay, let me go on to state that there is a very modern four story building that is brand new right there adjoining this incinerator, and it is indeed an office park.

Mr. Cohen: It's used by?

The Witness: DeKalb County.

Q. (By Mr. Cohen): County employees of De Kalb County?

A. Yes, sir.

Q. What is the other public building that you have got marked, which is the one over on Church Street?

A. This is DeKalb County Courthouse, they carry on the various trials and this sort of thing in this Courthouse, and they

also have county offices there that are not housed in these other public buildings.

* * * * *

[99] Mr. Cohen: Have any people utilized either of those facilities to engage in protests or to communicate a message to the public?

The Witness: Yes, sir.

Mr. Mascotti: I—He asked the question—

Judge Ricci: You repeated the same question you said before, you got angry with me when I stopped it. Now you have deprived General Counsel of an opportunity to object.

Mr. Cohen: He can use the motion to strike if he wishes to.

Mr. Mascotti: It has no bearing on the case.

Judge Ricci: Nothing is hurt by more answers.

Mr. Cohen: Will you describe, if you will, what type of activities you have personally seen being conducted in those locations by people communicating to the public?

Mr. Mascotti: I object, your Honor, it's immaterial.

Judge Ricci: Sustained. Sustained.

Mr. Cohen: May I—

[100] Judge Ricci: Offer of proof?

Mr. Cohen: I want to first argue, if I may, why I think it is relevant.

Judge Ricci: Yes.

Mr. Cohen: I think it is relevant to show in this case, Mr. Ricci, the ways that people can communicate a message to the public because there were other ways that were available to the union in this case. Our position in this case which we argued to the Board is that the union had reasonable means of access to the public other than picketing on the North DeKalb Center Mall. In order to demonstrate that point, I want to indicate how other groups have sought to communicate messages. The fact that someone wants to voice an opinion against the Viet Nam War or any other purpose may have utilized public facilities located in that area of the North DeKalb

Shopping Center. To me it is very critical showing that there are ways for the union here to have publicized this message besides using private property of Scott Hudgens Company. That is the purpose of my question, or to demonstrate that that is the line of questioning I am pursuing.

Judge Ricci: I sustain the objection.

Mr. Cohen: May I make an offer of proof?

Judge Ricci: Sure.

Mr. Cohen: May I do it by question and answer?

Judge Ricci: No.

[101] Mr. Cohen: I would offer to prove that if the witness were allowed to testify he would indicate that the locations he has testified about on Respondent's Exhibit 22, there have been people protesting the Viet Nam War, protesting other Government practices who have engaged in picketing and handbilling on those locations.

Judge Ricci: I reject the offer of proof.

Mr. Cohen: Mr. Ballard, do large number of people gather at the two locations shown, two public building sites shown on Exhibit 22?

Mr. Mascotti: I object.

Judge Ricci: I'll tell you what, it's going to be faster, even if it's wrong. Everybody knows how people protest.

Mr. Mascotti: I know, but what has it got to do with this case?

Judge Ricci: Therefore, nothing is hurt by repeating it.

Mr. Mascotti: If you have got to get on a plane at 6 o'clock, we'd better get down to the meat of the case.

Mr. Cohen: It is not going to take me long.

Judge Ricci: The urgent thing is to hear the case. Mr. Cohen, I don't want him to feel prejudiced, ask him. I don't remember the question, ask it again.

Mr. Cohen: My question was, do large groups of people gather at the two public locations shown that you have marked on Exhibit 22?

[102] The Witness: Yes, sir.

Q. (By Mr. Cohen): Would those groups of people be larger than the groups of people who may frequent the North DeKalb Center Mall in January?

A. On certain days, sure.

Q. Are there other public sites besides the two you have mentioned that you have not marked on Exhibit 22? You marked two, are there others as well?

A. Yes, sir.

Q. Can you tell us briefly what those are?

A. There is a United States Post Office, the DeKalb County School grounds, the DeKalb County Junior Colleges, the public right of ways—

Judge Ricci: What do you mean public right of ways?

The Witness: The right of way owned by the State of Georgia or either by the Federal Government.

Judge Ricci: You mean a highway?

The Witness: Yes, sir.

Mr. Cohen: I'm talking about buildings in the area, I'm sorry.

The Witness: Okay.

Q. (By Mr. Cohen): The ones you just mentioned, are those all located in the area shown by Exhibit 22?

A. Yes, sir.

Q. Do large groups of people frequent these other places you [103] have mentioned?

A. Yes, sir; I'm sure they do.

Q. Again confining yourself to the area shown on Exhibit 22, are there places where sporting events are held in that area where large groups of people come?

A. Yes, sir; there is Avondale Stadium, Southwest DeKalb Stadium, there is Atlanta Stadium, there is the Omni, there is .....illegible..... Colosium.

Q. Would all those be in the area shown on Exhibit 22?

A. Yes, sir.

Q. Do large groups of people frequent each of those places?

A. Yes, sir, they sure do, very large.

Q. Would those groups exceed the number of people found at the North DeKalb Center Mall in January on a given January day?

A. Yes, sir, they sure will.

Q. Again confining yourself to Exhibit 22, are there factories and military bases which employ large numbers of people?

A. Yes, sir, there sure are.

Q. Could you tell us what those are briefly?

A. Chevrolet has two plants, one on the north side perimeter, there is another plant on Boulevard, on the southeast side of Atlanta there is Ford Motor Company that has a large manufacturing plant, there is Lockheed, there is Crown Cork and Seal, and any number of places, there is the State Farmers [104] Market, very large places that people would congregate.

Q. Will the number of people found at each of those sites on occasion be greater than the number found at the North DeKalb Shopping Mall on a January day?

A. Yes, sir.

Judge Ricci: The Atlanta Braves, is that the name of the team?

The Witness: Yes, sir.

Judge Ricci: Are they within that map?

The Witness: Yes, sir.

Judge Ricci: A lot of people go to see baseball games.

Mr. Cohen: I now offer Exhibit 22.

Judge Ricci: I have received that already, and if I didn't, I receive into evidence Respondent's Exhibit 22.

Mr. Cohen: Mr. Ballard, did Local 315 of the RWDSU, the union in this case, did it ever request permission to use the kiosk at the North DeKalb Center Mall?

The Witness: No, sir, they did not.

Q. (By Mr. Cohen): Did they ever ask permission to use the auditorium?

A. No, sir, they did not.

Q. Just two more questions to ask you. You have talked about the entrances to the mall, I mean to the shopping center, and have indicated there is public property at each of those sites. Could a picket, someone with a picket sign, someone [105] handing out literature, stand at each of those five entrances without any danger to his life or his limb?

A. Yes, sir, he sure could.

Q. And could somebody coming by in a car at each of those entrances see the picket sign that he had in his hand?

A. Sure, very well.

Mr. Cohen: I have no further questions?

Mr. Mascotti: Just a few questions.

Cross-Examination

Q. (By Mr. Mascotti): Mr. Ballard, how large of a highway is this Lawrenceville Highway, is it six lanes, eight lanes, ten lanes?

Judge Ricci: Which highway?

Mr. Mascotti: Lawrenceville Highway.

The Witness: Which way?

Judge Ricci: All together, both ways, we are talking about the area that comes by the shopping center.

Mr. Mascotti: Right.

The Witness: Four lanes.

Q. (By Mr. Mascotti): Four lanes on one side and four on the other, isn't it?

A. No, sir, two lanes on one side and two lanes on the other side, to the best of my knowledge, it's two lanes on each side.

Q. And North Druid Hills Road is the other one, isn't it?

A. That's right.

[106] Q. How many lanes is that?

Mr. Cohen: I object, North Druid Hills does not border the shopping center.

Judge Ricci: Just a moment, the map shows there are four streets that come from Druid Hills Road and there are three entrances to the parking lot, right.

Mr. Cohen: But not off North Druid Hills Road.

Judge Ricci: Off the record.

(Discussion off the record.)

Judge Ricci: On the record.

In order that the last question be understandable to anybody who reads the transcript, if I misquote you, Mr. Mascotti, correct me, but I understand you to be asking the witness that road called Druid Hills Road, you know, Mr. Ballard, the one from which three streets connect, Birch, Oak Tree and Mistletoe, into the parking lot, that road; at that point where these three streets cut off, how wide is it, how many lanes in it?

The Witness: It's four lanes, sir.

Judge Ricci: Two one way and two the other?

The Witness: That's correct.

Judge Ricci: What else do you want to ask him?

Mr. Mascotti: Most of the people, or the majority of the people, I wouldn't say all because there might be an exception, use cars to come into your parking lot.

[107] The Witness: Either cars or buses, yes, sir.

Q. (By Mr. Mascotti): They don't walk, I mean.

A. The people that live close walk.

Q. Probably so, but I mean the majority of them. And you say you have 2,600 parking spots in there?

A. Yes, sir.

Q. Are they usually filled up every day?

A. No, sir.

Q. On an average, how many would you say you fill up during the day? Back in '71 now I'm talking about.

A. On an average how many, I don't have any idea.

Q. You have no idea. How many customers do you average or figure that come into the mall per day?

A. Based on an annual average, weekly average, there are 45,000 people.

Judge Ricci: Are you saying to the extent that you can judge if there are any records, about 45,000 persons visit the mall each week?

The Witness: On an average, right, this is on an annual average.

Judge Ricci: Of course, at Christmastime it would be a lot more crowded.

Mr. Mascotti: That's what I want to get at.

Now, on direct examination you testified that the union did not ask you to use the kiosk or the auditorium.

[108] Mr. Cohen: Kiosk.

Judge Ricci: Is that right?

The Witness: Yes.

Mr. Mascotti: Did you tell the union they could picket at the kiosk or the auditorium?

The Witness: No, sir.

Q. (By Mr. Mascotti): Do you have any idea of how much traffic is on Lawrenceville Highway? It's a pretty busy street, is it not?

A. Yes, sir, it's a busy street.

Q. Any North Druid Hills Road is quite a busy city street.

A. Yes, sir.

Q. Now, North DeKalb Shopping Center draws its people from Atlanta and Decatur and surrounding areas, right?

A. Yes, sir.

Q. How many people would you say normally are in the Atlanta area, the shopping area you deal with, a million and a half, two million?

A. I'm not qualified to answer that, I don't think.

Q. What is the size of Atlanta, do you know, roughly?

A. Yes, sir, it's roughly a million and a half people.

Q. And Decatur?

Judge Ricci: Is the shopping center within the city limits?

The Witness: Not of Atlanta.

[109] Mr. Mascotti: It's on the borderline.

Judge Ricci: That's all right.

Mr. Mascotti: Are you figuring DeKalb County too, in that million and a half?

The Witness: Yes, sir.

Mr. Mascotti: No further questions.

Judge Ricci: All right.

Mr. Cohen: I have a few questions.

Judge Ricci: What do you want?

Mr. Cohen: I want to ask him some questions.

Redirect Examination

Q. (By Mr. Cohen): Showing you Exhibit 2—I'm sorry, how big a street is Birch Street?

A. It's a two lane street, one lane going each way.

Q. And Oak Tree the same?

A. Yes, sir.

Q. And Mistletoe the same?

A. Yes, sir.

Q. Are those busy streets?

A. No, sir.

Q. Somebody would only be traveling down that street if they wanted to get from the North Druid Hills Road to the shopping center?

A. Yes, sir, or either they live on that street.

Q. There are homes on that street too?

[110] A. Yes, sir.

Judge Ricci: Would you say that these three streets, Birch, Oak Tree and Mistletoe—by the way, how many blocks is it on Oak Tree from the parking lot to Druid Hills Road?

The Witness: One.

Judge Ricci: One. That block and the one at Birch and Mistletoe, are those streets that have private houses on them?

The Witness: Yes, sir.

Judge Ricci: One family or two family houses?

The Witness: One family.

Judge Ricci: They are not commercial houses then?

The Witness: No, sir. Well,—

Judge Ricci: I mean on Birch, on Oak Tree and on Mistletoe itself.

The Witness: There is commercial and residential.

Judge Ricci: I see.

The Witness: Both.

Judge Ricci: I see, even on those streets.

The Witness: Yes.

Mr. Cohen: When you say it is a block, is that a normal city block or a longer block, the normal city block of a downtown Atlanta block?

The Witness: It's about the same size.

Q. (By Mr. Cohen): You testified Lawrenceville Highway is a busy street. Is there a stop sign, a stop light at any [111] point near the three entrances to the shopping center?

A. There is a stop light at the intersection of North Druid Hills and Lawrenceville Highway, which is right—

Judge Ricci: Wait a minute, do you mind answering the lawyer's question? He gets offended if you don't answer. You said that from Lawrenceville Highway—

Mr. Cohen: Mr. Ricci, I think the witness was answering the question.

Judge Ricci: I don't think he was, he's volunteering, I would rather he would answer the question.

You said this morning Lawrenceville Highway, from Lawrenceville Highway there are two entrances to the parking lot, the two to the right of this sketch.

The Witness: That's right.

Judge Ricci: The lawyers asked first at those entrances, and I am asking you, are there red lights?

The Witness: No, sir, not at those entrances.

Judge Ricci: You were saying further away from there there is a red light?

The Witness: Yes, sir.

Judge Ricci: Tell us where it is.

The Witness: Approximately 175 feet, at the intersection of North Druid Hills and Lawrenceville Highway. Approximately 175 feet from the top entrance.

Mr. Cohen: That's the northerly entrance on Lawrenceville [112] Highway.

The Witness: There is a stop light at the intersection of North Druid Hills and Lawrenceville Highway.

Q. (By Mr. Cohen): So that cars would only have to travel 175 feet then from that light, from that place where they stop for the light, to enter into the shopping center.

A. Yes, sir.

Q. And you testified earlier, I think, that cars in order to enter off that highway will slow down when they enter into the center.

A. Yes, sir. They have to stop coming out.

Q. Is there an entranceway—Is the entrance different at any point between the two entrances on Lawrenceville Highway and the entrances as you come off Mistletoe, Oak Tree and Birch, is the width or the size of the entrance in any way different?

A. Not to a great degree, they are about the same.

Q. One other question. You testified there are about 45,000 people who come to the center on an average. Are there a number of people who frequent this center in late January, is it greater or lesser than the average?

A. It's way less that the average. Very few people come in January.

Q. Is January then—How would you rank January, that period of time, as far as the number of people coming to the [113] center with other times of the year?

A. It would either be the very bottom or next to the bottom, January and February are poor retailing months, either one of them. There is almost nil traffic there.

Mr. Cohen: I have no further questions.

Mr. Mascotti: No further questions.

Judge Ricci: Okay.

(Witness excused.)

Mr. Cohen: May we go off the record?

Judge Ricci: Off the record.

(Discussion off the record.)

Judge Ricci: On the record.

There has been marked for identification a Respondent's Exhibit Number 23, it is an affidavit by a gentleman named (spelling) H-e-a-l-d, and the reason for the stipulation with respect to this exhibit is to avoid calling Mr. Heald. This is a statement of fact in the form of an affidavit. I understand that Mr. Mascotti for the General Counsel and Mr. Cohen for the Respondent stipulate that what is written on this affidavit is a fact, true, right?

Mr. Mascotti: Right.

Judge Ricci: Mr. Cohen?

Mr. Cohen: That is correct.

Judge Ricci: And I, therefore, receive into evidence the Respondent's Exhibit Number 23. We will leave it to Mr. [114] Cohen to give the girl copies because this is the original affidavit and you may want that back.

(The document referred to was marked Respondent's Exhibit 23 and received in evidence.)

Judge Ricci: I understand there is a further stipulation between the parties reached in conjunction with Exhibit 23. It is that there is no contention by the Respondent arising from this number 23 exhibit that the company that sells the shoes and the company that runs the warehouse are separate employers, that they are anything but single employer, whatever their corporate entity name might be. Correct, sir?

Mr. Cohen: That is correct.

Mr. Mascotti: All right.

Judge Ricci: That is a fact.

Mr. Cohen: Separate employers within the meaning of 8(b)(4) of the Act.

Judge Ricci: They are not separate employers.

Mr. Cohen: Not separate employers.

Judge Ricci: The further stipulation of fact for clarification is that the two groups of employees in the store or other Butler's Shoe stores do not constitute the same bargaining unit. You put it your way, sir.

Mr. Cohen: The employees, just like you defined it, the employees working at the North DeKalb Shopping Center in the Butler retail shoe store there and the employees working at [115] the Butler Shoe Corporation warehouse at 204 Brookwood Drive in Atlanta would not be part of the same bargaining unit under the Act.

Judge Ricci: Is that right, sir?

Mr. Mascotti: Fine.

Judge Ricci: That's the stipulation of fact.

Off the record.

(Discussion off the record.)

Judge Ricci: On the record.

Whereupon, LESLEY E. ROGERS was called as a witness, by and on behalf of the Respondent, and, having been first duly sworn, was examined and testified as follows:

Judge Ricci: What is your name?

The Witness: Lesley E. Rogers.

Judge Ricci: Where do you live, Mr. Rogers?

The Witness: 590 Martina Drive, Northeast, Atlanta.

Direct Examination

Q. (By Mr. Cohen): Mr. Rogers, by whom are you employed?

A. Scott Hudgens Company.

Q. What is your position there?

A. I'm maintenance and security supervisor.

Mr. Cohen: May I take a minute recess?

Judge Ricci: Sure, off the record.

[116] (Discussion off the record.)

Judge Ricci: On the record.

Mr. Cohen: Mr. Rogers, did you have that same position in January 1971?

The Witness: No, I did not.

Q. (By Mr. Cohen): What was your position then? Were you in charge of maintenance and security at North DeKalb Center Mall in January of '71?

A. No, I was not.

Q. What was your job then?

A. I was working at Broadview Plaza Shopping Center.

Q. But you presently are in charge of maintenance and security?

A. That's correct.

Q. How long have you held that job?

A. Approximately 20 months.

Q. Did you report to Mr. Ballard during the time that he was the general manager?

A. Yes, I did.

Q. To your knowledge, is the policy of security and the policy toward people coming out to the center, is that any different now than what it was in January of '71?

Mr. Mascotti: I object, Your Honor.

Judge Ricci: Overruled.

Mr. Mascotti: He wasn't there in '71. He doesn't know [117] what the policy was.

Judge Ricci: He can ask him about June of '71.

Mr. Cohen: He has been there 20 months.

Judge Ricci: He said he came in about June of '71. Is that right?

The Witness: Yes.

Mr. Cohen: Was the policy any different in June when you got there and January of '71, was there a change in policy?

Judge Ricci: How would he know, he worked somewhere else?

Mr. Masotti: I object.

Judge Ricci: Did he say he worked somewhere else?

Mr. Cohen: He worked somewhere else, but he would have known.

Did you change any existing policy?

The Witness: I continued the existing policy.

Q. (By Mr. Cohen): What security force is there at the North DeKalb Center Mall?

A. We have some of our own employees employed at certain shifts and we have an outside security agency to provide uniformed armed guards with two-radio communications. And then on the midnight shift we have our own personnel that cover, and on the weekends.

Q. What time are these guards present at the center?

A. Guards come on from Monday from 2:30 until 10:30.

Judge Ricci: The outside guards?

[118] The Witness: Yes, sir, the uniformed personnel. And on Saturday they come in at 10 until 11.

Mr. Cohen: 10 in the morning until 11 at night?

The Witness: Yes, sir, and then the midnight shift is covered by our employees, and the weekend is covered by our own employees.

Q. (By Mr. Cohen): Do the outside people and the people who work for Scott Hudgens, do they each get their directions and orders from you?

A. Entirely.

Q. Now just so the record is clear, what time is the mall locked and no access permitted?

A. The mall is locked at 10 o'clock weekdays and it is locked at 7 o'clock on Sundays, 7 p.m. on Sunday. It stays locked on weekdays until 7 o'clock in the morning, and on

Sunday until about—well, around noon. And then locked again about 7, 7:30 on Sunday night, Sunday evening.

Q. When the mall is locked can anyone enter without permission from you or Mr. Ballard?

A. No, sir, they have to produce a pass.

Q. During the time the mall is open, is there any dress regulation as to what people can wear or not wear during the times they come onto the mall?

A. We don't allow people that are barefooted and without shirts.

[119] Q. Do you enforce that policy?

A. Yes, we do.

Q. Do you have any regulation about people taking pets into the mall?

A. Yes, we do.

Q. What is that regulation?

A. If they have pets they have to carry them in their arms or have them on a leash, which means moving, we don't allow them to sit and lounge around in the mall.

Q. Do you enforce that policy?

A. Yes, sir, we do.

Q. Do you have any policy about cars remaining in the parking area?

A. Yes, we do. If a car stays overnight we have a check made on them to see if the car is abandoned or stolen. Mostly we see if it is stolen and we try to locate the owner, and then we try to call the owner and tell them to come get their car. And if we can't locate the owner we wait two or three days and then we tow it off.

Q. You call the owner, in that case what do you explain as far as the policy of the center?

A. We tell them that the parking lot is for our shoppers, for people to come in and out of the shopping center for the purpose of shopping, it is not a storage yard or not a used car lot.

[120] Q. Do you have people—Have any occasions arisen where people have left cars on the parking lot with signs indicating they are for sale or advertising something?

A. Yes, sir. Many times people have a car they want to sell, they park it on the parking lot with a for sale on it. We take the information from that sign and we call and notify them to come and remove the car pronto. You know, get it off right now.

Q. Do you give them any reason for that?

A. Yes, we are not a used car lot.

Q. This is what you tell them?

A. That's what I tell them.

Q. Are there any regulations that we posted in the parking area of the shopping center, driving regulations of any kind?

A. Yes, sir, speed limit signs 15 miles an hour speed limit and stop signs.

Q. Maybe we can indicate, is this the type sign you have reference to?

A. Yes, sir; no parking.

Mr. Cohen: Can we have the witness describe that for the record? Again it is—

Judge Ricci: Mr. Witness, about how many of those signs are up in this enormous parking lot that has 2,600 places?

The Witness: Very few, I don't know the exact number.

Judge Ricci: Three, four, ten?

[121] The Witness: Maybe half a dozen.

Judge Ricci: Half a dozen, there are half a dozen signs like these?

Mr. Cohen: They all don't say—

Judge Ricci: What do you want to put in the record?

Mr. Cohen: This is the size of the sign, we posted signs there of this nature.

Judge Ricci: What do you want the record to show, the size of the sign of what is written on it?

The Witness: The size of the sign, and the witness has testified what is written on them, speed regulations and no parking regulations. This is a typical sign.

Judge Ricci: I make this, if I am wrong correct me, this sign, 10 inches by 15, how does that look? Fine.

Miss Reporter, there is a stipulation between the General Counsel and the Respondent that there are signs around the parking lot saying various things. The first agreement is that the signs are about 10 by 15 inches. Right, you agree?

Mr. Mascotti: I agree.

Judge Ricci: It's a fact. That they say various things, as the witness has been describing. It is also agreed that one of them says, because I am reading from it:

"No Parking, Fire Lane, Tow Away Zone".

Do you agree there is a sign that says that?

Mr. Mascotti: I'll take it, yes.

[122] Judge Ricci: It's a statement of fact. Okay, Mr. Cohen?

Mr. Cohen: Yes, these are steel signs, yellow background and green writing of approximately 3 inches height.

Judge Ricci: Did he state the stipulation correctly?

Mr. Mascotti: It's okay, we'll get the sign in, I'll stipulate.

Mr. Cohen: If someone violates one of the regulations, these are regulations that have been established by whom, the city of Decatur or the North DeKalb Shopping Center?

The Witness: North DeKalb Center.

Q. (By Mr. Cohen): They decide on their own what those regulations should be, the speed and the places to park?

A. That's right.

Q. If somebody violates one of those regulations what, if anything, is done about it?

A. Well, we try to stop speeders, and we try to stop people who park wrong, and we do everything we can to avoid any type of action to cause any inconvenience for anybody that might be shopping at the center or visiting there. If we can't—in other words, sometimes the security stops a speeder and they warn them that if they persist then sometimes the DeKalb County Police will catch them.

Q. Do the Police have any special—Do the Police come out and patrol the property and come into the center?

A. They do not.

[123] Q. Will the Police come onto the center for any reason unless they are called to come out in their official duties?

A. No, sir, if some of these violations are flagrant, then we call the Police and they come. They come just like they would for any other property owner.

Q. Is there a sewer system maintained at the North DeKalb Center?

A. Yes, sir, there is.

Q. Who maintains that system?

A. The Center itself.

Q. Is there sanitation, trash removal system at the center?

A. Yes, sir.

Q. Is that done by the center—who pays for that service?

A. The center pays part of it and each merchant pays a pro rata share. They pay for their own trash removal.

Q. Does the center receive any kind of special consideration by law or by practice that a normal commercial property owner would not receive if he had a single retail store?

A. Not that I know of.

Q. Subject to the same health requirements and other regulations?

A. Sometimes we think they are a little stronger.

Q. Mr. Ballard has testified as to the policy of the center of not permitting someone to come on except to use the kiosks or the auditorium by permission. Are you familiar with that [124] policy?

A. Yes, I am.

Q. I take it you receive requests each week from groups trying to come out.

A. Yes, I do.

Q. Do you follow the same practice Mr. Ballard testified to?

A. As nearly as I can.

Q. Have you asked groups to leave who were on without permission?

A. Yes, I have.

Q. How do you ordinarily become aware that someone has come on without permission?

A. Usually I get a complaint from some of the customers, they call the mall office and they are being molested or inconvenienced, and I go out and approach the people and question them, have a discussion with them, get them out if I can. Tell them our policy, tell them what the alternative is, and the other routes they can take if they don't want to do what I ask them to do.

Q. Have there been instances where somebody has passed out literature, handbills without your permission?

A. Yes, sir, there has.

Q. Has that caused any increase in your maintenance cost?

A. Well, it causes two increases in two different ways. It causes extra problems with security because if they see [125] handbills under windshield wipers they try to catch the person putting them on and that takes them away from their duties inside the mall in providing security and protection for our customers and our clients, and at the same time it causes us to go out and pick these things up off the ground, sweeping won't pick them up. If they do and it rains on them they stick to the ground and you have to go around and pick them up by hand. We get complaints if the wind blows them on our neighbors property, they raise cain with us, call upon and say we are littering their property. And so, we do everything we can to make periodic checks on an hour or an hour and a half basis to see that no one is passing out handbills because it is easier to catch that way than it is to correct it after it is done.

Q. Could you give us an estimate of what the cost is of cleaning up after some of these groups that have come out without permission?

A. It will vary from $50.00 to $80.00 a time, depending on how far they got before they got caught. Sometimes they are less, many times they are less than that.

Q. Have they created any parking problems?

A. Well, you see, ordinarily on some days in the week the parking problems wouldn't be too great, but usually these people try to come on Friday and Saturday, our busy days. And they try to get in close and try to unload and they double [126] park, and that creates some problems. Sometimes they will try to hide and go into the courts, and when they go in courts that's where no one—

Q. What do you mean by courts?

A. Unloading the loading zones, 15 minute parking limits for loading and unloading to the stores. They will get in there, park in front of a dumpster or somebody's door and that cuts out service, and we have to go around and hunt these people up and try to find out what we can do about it.

Mr. Mascotti: Would you entertain an objection, Your Honor? All this is immaterial as far as this case.

Judge Ricci: You are absolutely right. I overrule your objection. At least I agree with you, but I overrule your objection.

Mr. Cohen: Have you enforced this policy against handbilling against any of the tenants of the shopping center?

The Witness: Yes, I have.

Q. (By Mr. Cohen): Tell us what happened.

A. Sometimes they want to put on a special promotion, Craft Shack and some of the various stores, and they will turn out these flyers and handbills and they will start out passing them in the mall, and we go around and take them down, go to the manager and tell him to call their representatives back in, it is absolutely not allowed.

Q. What about putting posters up on the store windows?

[27] A. We rip them down.

Q. Has that been uniformly enforced?

A. Uniformly enforced 100 percent.

Mr. Cohen: No further questions.

Mr. Mascotti: No questions.

Judge Ricci: Thank you, sir.

* * * * *

VERNER HALTER was called as a witness, by and on behalf of the Respondent, and, having been first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination

[128] Q. Prior to that time where were you employed?

A. H. Stockton Atlanta, Incorporated.

Q. Who is H. Stockton?

A. H. Stockton is a men's retail store in Atlanta.

Q. What location were you employed at?

A. North DeKalb Center.

Q. In what capacity?

A. I was manager-owner, part owner of that store.

Judge Ricci: This is one of the stores in this center?

[129] Mr. Cohen: Yes.

In that capacity as manager of the Stockton store in the center, did you serve in any capacity on the Merchants Association?

The Witness: Yes, sir.

Q. (By Mr. Cohen): What is the Merchants Association?

A. The Merchants Association is the governing body made up of merchants. Each person who holds a lease for retail purposes at North DeKalb Center is automatically a member of the Merchants Association. From that group certain members are elected to be on the Board of Directors of the Merchants Association, and this body, the Board of Directors is the govern-

ing body for the events and advertising and the expense incurred by each on the shopping center.

Q. That is a group known as the North DeKalb Center Merchants Association, as shown on this kiosk permit?

A. Yes, sir.

Q. That is Exhibit Number 19. I'm sorry, in what capacity did you serve in the North DeKalb Merchants Association?

A. I was a member merchant for one year because I had a store there, I served on the Board of Directors for two years, being elected by fellow merchants, and served as the president of the organization the third year.

Q. That was during the period of time before you become affiliated with David Bockle Associates?

[130] A. Yes, sir.

Q. Can you tell us how advertising done on behalf of the North DeKalb Shopping Center, what the relationship is between the Merchants Association and David Bockle Associates?

A. David Bockle Associates acts as a body to find promotions to bring to the malls in hopes that these promotions will increase the traffic. These promotions are then presented to the Merchants Association and they are either approved, altered or disapproved by the Association. If they are approved the Merchants Association also approves when they will be conducted and the expense we are allowed to incur to promote the promotion.

Q. In your capacity with David Bockle Associates and the Merchants Association, have you become familiar with the different ways in which the North DeKalb Shopping Center has advertised to get people to come to the center?

A. Very definitely.

Q. Are you familiar with promotions that have been held at this center?

A. Yes, sir.

Q. Can you tell us what different means of advertising DeKalb Shopping Center has utilized in recent years to draw people to the center?

A. Just about the gauntlet. We use radio, TV, billboard, direct mail, newspaper and circulars.

[131] Judge Ricci: And what?

The Witness: Circulars.

Mr. Cohen: Let's take each of these in turn. In the area of newspapers, what type of events have you placed ads for in the newspaper? We are talking about the North DeKalb Center, it's whole entity.

The Witness: Basically the newspaper things we do are for an identity of the shopping center, we don't break it down and advertise the individual stores. We try to create an image through the newspaper media for the entire shopping center. This could be a fashion show on the mall, it could be advertising a camping show on the mall. The purpose of this advertising is image oriented as well as traffic oriented. We hope by having these promotions people in the community in light of the promotion will feel good about the shopping center.

Judge Ricci: Will you please tell me, Mr. Cohen, so I can follow and understand what relationship does the company with the shopping center have to do with the union activity?

Mr. Cohen: My contention here is, Your Honor, there is a most important decision before you under the Board's Decision of December 29, 1972 in S. E. Nichols, (spelling) N-i-c-h-o-l-s, 200 NLRB No. 161 in a case of this nature, is whether the union had other means of access to the employees. It held that in a case almost identical to this, the controlling case is [132] Babcock and Wilcox Company, and that the consideration of Babcock and Wilcox, does the union have other effective means of reaching its audience. My argument then, Mr. Ricci, is this, that the center has been engaged in numerous ways in trying to get its message to people to come to the shopping center. The union had a message, don't come to the shopping center, at least don't come to one store at the center. The union could have utilized the very same means which would have been as effective if not more effective, which would have been as economical, if not more economical, which I am going to show

through this witness, as the means of picketing with the placard in front of Butler's Shoe Company. By virtue of having these means available the union thereby had access to its intended audience, the customers of the Butler's Shoe Store, and did not have to picket in the shopping center premises.

* * * * *

[134] Mr. Cohen: Mr. Halter, what newspapers have you placed advertisements in?

The Witness: We basically use two newspapers, we use the Journal-Constitution, which is the metropolitan Atlanta newspapers, and use the Decatur-DeKalb News, which is a weekly publication that happens to fall right in the center of our market area. It also happens to be the largest circulation of any weekly publication in the State of Georgia.

Q. (By Mr. Cohen): Were both of these newspapers utilized in the period around January 1971?

A. It would depend on the promotion around that date, I don't recall.

Q. Were they both in existence at that time?

A. Very definitely we were using them at that time.

Q. We have introduced in evidence Respondent's Exhibit Number [135] 2, which is a map of the greater Atlanta area showing you the portion of that map that has been marked, would all that area be serviced by the Atlanta Journal-Constitution?

A. Very definitely.

Q. Would it actually circulate in a larger area than is shown on that map?

A. Much large.

Q. And the second paper, the DeKalb-Decatur News, would it service the entire DeKalb County area as shown in Exhibit 22, the entire DeKalb County area?

A. Yes, sir.

Q. That would service that entire area?

A. Yes, sir.

Q. Did you prepare at my request yesterday a summary of the current figures, a summary of the current circulation of these papers, the cost of putting an ad in each of those papers, and the cost of reaching per thousand people through these papers?

A. Yes, sir.

Q. Were these taken from your records in your office?

A. Yes, sir.

Mr. Cohen: Would you mark this please, 24?

(The document referred to was marked for identification as Respondent's Exhibit 24.)

Mr. Cohen: I am showing you what has been marked as [136] Respondent's Exhibit 24, will you tell me whether the facts and data shown on that document were done under your direction and supervision?

The Witness: Yes, sir.

Q. (By Mr. Cohen): You have indicated, for example, the source for each one. Under total circulation audited for the Decatur-DeKalb News, as well as the Journal-Constitution, you have indicated SRDS, what does that stand for?

A. That stands for standard rate and data service. This is an independent agency who takes and certifies circulation of periodicals and we buy the service so that we can for our clients get the best buy for the circulation in a particular area. It also will give you a break out on the reader, it will give you the area he lives in, et cetera.

Q. This is the correct total circulation for each of those papers?

A. Yes, sir.

Q. And the rates, you indicated rate card, what is that?

A. The rate card is a card supplied by the publication itself that will give you the varying rates they offer depending on how many ads you run and the size of the ad, et cetera.

Q. What you have indicated is the cost of a half-page ad, 500 inch rate is the rate shown by that rate card?

A. Yes, sir.

Q. Then the cost per thousand is a division of one item of [137] the total circulation into the cost of the page ad?

A. Yes, sir. So in essence, to reach a thousand people at this rate it would cost you $3.50.

Q. Those are current rates as of yesterday?

A. This is our latest rate book, which we just received the first of last month.

Q. Do you know if there has been any significant change in the circulation or the rates since 1971?

A. Yes, sir.

Q. What is that?

A. Both have gone up.

Q. Both have gone up, do you know to what degree?

A. Population increase I couldn't say. The rate itself has probably gone up 50 cents.

Mr. Cohen: I would now like to offer Exhibit 24.

Mr. Mascotti: No objection.

Judge Ricci: I'll take it. I receive the Respondent's Exhibit Number 24.

(The document referred to, heretofore marked Respondent's Exhibit 24, was received in evidence.)

Judge Ricci: Cost of advertising.

Mr. Cohen: Newspaper advertising.

By the way, has newspaper advertising been an effective or ineffective method of drawing potential customers to the center? [138] The Witness: It really depends on the promotion itself, but it is generally a very good means of drawing increased traffic to the center.

Q. (By Mr. Cohen): Visual means, head counts or otherwise ascertain that more customers have been attracted to these various events by means of newspaper advertisements?

A. Yes, sir.

Q. You have also indicated that another means that you have used has been television. Do you use any particular channel?

A. From time to time we have used almost all of them except one, the primary station we use is WSB-TV.

Q. Is that a large station or not so large?

A. That's the biggest television station in audience reach and also expense.

Q. On what types occasions would you use WSB-TV?

A. Here again, we use them more for a general nature, that is image, to build image, and we would use this like the newspapers, we would use it to promote a camper show or to promote a promotion we would have on the mall that we would want—we would feel would be of interest to total population in Atlanta. For example, an antique fair. We would use it to promote something of that nature that would be unique to the Atlanta area.

Q. Is there any source that will show the area which WSB-TV would serve, number of families?

[139] A. Yes.

Q. What is that source?

A. The Nielson.

Mr. Cohen: Would you mark this Exhibit 25?

(The document referred to was marked for identification as Respondent's Exhibit 25.)

Mr. Cohen: I am going to show you Exhibit 25. Is this an accurate representation of the Nielson ratings for WSB-TV for October 26 through November 22, 1972?

The Witness: Yes, sir.

Q. (By Mr. Cohen): It shows under table 1 the number of families reached by the station?

A. Yes. If you can read it, it's there, it didn't duplicate well.

Q. That is current?

A. That is current.

Q. Nielson is used by you in the regular course of your business?

A. It's just like SDRS, it's a service we get to give us the number of people reached at certain times of day, breakdown

of the stations, their audience at certain times of the day, and buys. How we can best spend our money.

Q. In 1971 did WSB-TV reach approximately the same area as shown on this exhibit 25?

A. Exactly the same area.

[140] Mr. Cohen: I would offer Exhibit 25.

Mr. Mascotti: I have no objection to what it purports to represent.

Judge Ricci: I receive number 25.

(The document referred to, heretofore marked Respondent's Exhibit 25, was received in evidence.)

Mr. Cohen: Did you also in the case of WSB-TV make a similar compilation that you could use in the case of the newspapers as to how much a quarter hour—I'm sorry, a 30-second spot would run and the cost per thousand?

The Witness: Yes, sir.

Mr. Cohen: Would you mark this Exhibit 26?

(The document referred to was marked for identification as Respondent's Exhibit 26.)

Mr. Cohen: I am showing you Exhibit 26. Was that prepared under your direction and supervision?

The Witness: Yes.

Q. (By Mr. Cohen): Are the figures taken there the average quarter hour audience from the current Nielson rating?

A. Yes, sir.

Q. Was the cost of a 30-second spot taken from the same rate cards, same as the newspapers?

A. Yes, sir.

Q. The other final figures were arrived at through the process of diving one into the other?

[141] A. Yes.

Q. So that you got the rate per thousand?

A. Right.

Q. How would those figures compare to the figures that would have existed in 1971?

A. Well, again, the population would be less.

Q. The population would be less or more?

A. Population in '71 would be slightly less than it is now, but so would the rate.

Mr. Cohen: I would offer Respondent's Exhibit 26.

Judge Ricci: Let me see if I, whoever is going to read this transcript after me, can understand what is going on. We are looking at Number 26. Up on the top it says:

":30 spot, late news, week night".

Does that ":30" means half a minute?

The Witness: Yes, sir.

Judge Ricci: Does it mean then that this sheet, run down refers to a cost of a 30 second commercial advertising on television late at night during a news program?

The Witness: Yes, sir; local, not national.

Judge Ricci: Of course, in Atlanta.

The Witness: Yes.

Judge Ricci: Further down a little bit where it says cost per thousand, does it mean this, that if you arrange to have a 30-second advertising spiel on such a program on a [142] Washington television station—

Mr. Cohen: Atlanta television station.

Judge Ricci: Atlanta television station, the cost to the advertiser would be $1.65 for every thousand persons it reaches with that 30-second spot.

The Witness: Yes, sir.

Judge Ricci: And the 30-seconds would cost in Atlanta to whoever wants it $255.00.

The Witness: Yes.

Judge Ricci: But in view of how many people there are and what they scientifically know as the number of people who watch television at that hour at that station and so on, it costs $1.65 for every one thousand that you reach.

The Witness: Yes.

Judge Ricci: Would that approximately be about the meaning of the other meaning that you have that compared this as to newspapers?

The Witness: Yes.

Judge Ricci: Thank you. I receive this number 26.

(The document referred to, heretofore marked Respondent's Exhibit 26, was received in evidence.)

Mr. Cohen: In addition to using the single 30-second spot, has the North DeKalb Shopping Center also contracted for multiple spots appearing at different times during the day?

[143] The Witness: Yes, generally that is the buy we would make.

Mr. Cohen: Would you mark this Exhibit 27, please?

(The document referred to was marked for identification as Respondent's Exhibit 27.)

Mr. Cohen: I am going to show you what has been marked for identification as Exhibit 27. This indicates the Back to School advertising conducted in August 1972. Was this done by the North DeKalb Center?

The Witness: Yes.

Q. (By Mr. Cohen): It appears on here the different audiences and the time of the spot, the audience reached on each of those particular days.

A. Right.

Q. How was that audience computed?

A. I don't understand the question.

Q. How was the figure arrived at for the audience at that particular time?

A. That's taken from Nielson.

Q. Then you came up with the total audience, the cost is shown below, it's $2165 gross charge.

A. Yes.

Q. That was divided through to get the rate of 78-cents per thousand.

A. Yes.

[144] Q. So the cost of using multiple spots then is considerably less than using a single spot?

A. Oh, yes, yes.

Q. Is this a representative type of multiple spot engaged in by the center?

A. Right. Our reason for making a buy such as that is that generally we go for the total market which you don't necessarily do with a late night news program, so that could catch the housewife at home at 3 o'clock in the afternoon, or the morning, before 7 o'clock in the morning when she is fixing breakfast, and 11 o'clock at night. It's a full spectrum.

Mr. Cohen: I offer Exhibit 27.

Judge Ricci: I'll take it.

Mr. Mascotti: No objection.

Judge Ricci: I take Number 27 into evidence.

(The document referred to, heretofore marked Respondent's Exhibit 27, was received in evidence.)

Mr. Cohen: By the way, these rates are quoted for WSB-TV would they be higher or lower for one of the other television stations with which you deal?

The Witness: That would be lower for the other stations. WSB is the most expensive TV station in Atlanta.

Q. (By Mr. Cohen): How effective is television, how effective has it been in drawing people to the North DeKalb Shopping Center?

[145] A. Extremely effective.

Q. That has been demonstrated by head counts and visual observations?

A. Yes.

Q. You testified that you also use radio on occasions. Is that used frequently or infrequently?

A. Frequently.

Q. What type events would you use radio for?

A. Again, we would use it for camping sale, we would use them for a fashion show, we would use radio for a promotion

such as Millionaire for a Day, which is a give-away that we do for some shopper that comes out and puts her name in a box and we make her a Millionaire for a Day.

Q. Did you recently have an antique show at the center?

A. I'm sorry, I can't hear you.

Q. Did you recently have an antique show at the center?

A. Yes.

Q. How was that promoted?

A. The antique show was promoted on WSB-radio, AM and FM.

Q. Was it—I'm sorry, was that a successful advertising campaign?

A. I wish they were all that successful.

Q. Your answer is yes then?

A. Yes, very definitely.

Mr. Cohen: Would you please mark this as Exhibit 28?

[146] (The document above referred to was marked for identification as Respondent's Exhibit 28.)

Mr. Cohen: Showing you Exhibit 28, it is a map by something called the American Research Bureau. Would you tell us what that is and what that map depicts?

The Witness: Well, it's another service that we purchase, that will give you a breakdown on the media that you are trying to reach through a particular means. In this case it happens to be radio. And this shows the area that WSB radio reaches. You can see the metropolitan area, immediate metropolitan counties, a number of counties, some of them going as far over as Alabama.

Q. (By Mr. Cohen): So that WSB-TV and WSB radio would reach a much larger audience than just the greater Atlanta area?

A. Very definitely.

Q. Is this an accurate reproduction of records you keep indicating the number of people serviced by WSB radio?

A. Yes.

Q. Would this have been the same or different in 1971?

A. Again, it would have been the same as far as the power, as far as where they reach, but their rates would have been less.

Q. And the number of people reached?

A. Would have been less.

Mr. Cohen: I offer Exhibit 28 at this time.

[147] Judge Ricci: I receive it into evidence.

Mr. Mascotti: No objection.

(The document referred to, heretofore marked Respondent's Exhibit 28, was received in evidence.)

Mr. Cohen: Would you mark this please? It's the last one, Number 29.

(The document above referred to was marked for identification as Respondent's Exhibit 29.)

Mr. Cohen: I show you what has been marked as Exhibit 29. First of all, look at the second and third pages. Can you tell me what these pages are?

The Witness: This is a contract for a buy and gives you a schedule on WSB radio, one is AM, one is FM.

Q. (By Mr. Cohen): What is that particular event that that is a contract for?

A. This is for the antique fair we just had.

Q. This is a contract between North DeKalb Center and WSB radio?

A. Yes.

Q. What indicates when the spot announcements are made on the radio, 60-second announcements were made at the times shown on each of those documents?

A. Yes.

Q. And the cost of the 60-second spot, the 12 spots is the figure reflected below, $783.00 for AM and $216.00 for the FM?

[148] A. Yes.

Q. Is the front page then a compilation from your records indicating the audience reached by those spots, the cost and the

cost per thousand computed in the same way you did for newspaper and television?

A. Yes.

Q. This was taken from your official records that you keep in the course of your business?

A. Yes.

Mr. Cohen: I offer Exhibit 29. I might explain that is a Tap Plan.

Tell us what a Tap Plan is.

The Witness: A Tap is an abbreviation of the station for what is called Total Audience Plan. That plan is to guarantee you one-third of your spots to run in what they call prime time and they let the other spots fall where they may, so you get the total audience. You may not just reach the drive customer, it may be on at 3 o'clock in the morning or 6 o'clock in the morning, but they guarantee at least a third of your buy will occur in what is called drive time.

Q. (By Mr. Cohen): Or prime time?

A. Prime time.

Q. This is the plan normally used by North DeKalb Shopping Center?

A. Right, because we shotgun the market, we go after every [149] facet of consumer, not just the man who may be driving to or from work.

Judge Ricci: They offered that one too.

Mr. Mascotti: All right, I don't object.

Judge Ricci: Consistency above all. I receive Number 29 in evidence.

(The document referred to, heretofore marked Respondent's Exhibit 29, was received in evidence.)

Mr. Cohen: By the way, are the rates for WSB-TV higher or lower than other radio stations?

The Witness: The TV?

Q. (By Mr. Cohen): Radio, excuse me.

A. Yes, they are higher than other comparable stations with the same market.

Q. How effective has radio been in attracting customers to the mall?

A. Very effective.

Q. Can you ascertain that by independent checks?

A. Yes, sir.

Q. You indicate also that you on occasion use direct mail.

A. Yes.

Q. What type of events would you utilize direct mail for?

A. Direct mail would be a seasonal sale we are going to have. We would put together a circular and then mail the [150] circular out and in the circular it would be institutional oriented for the shopping center, and then each merchant, if he chooses, can add his own ad for his own product or products, inserted in the circular.

Q. To what area would you mail this?

A. This would go to our immediate shopper, or to our immediate area surrounding the shopping center.

Q. Did you at my request yesterday find out the rate, the cost of such a distribution?

A. Yes.

Q. Could you tell us what that is, please?

A. It depends, of course, on the size of the article, but we buy a bulk rate for $45.00 from the Government, and then you are charged 4½ cents per item mailed.

Q. Do you remember the cost for any particular distribution?

A. Well, this would be a rough figure, I think we did one for about 50,000, it cost something like $3,500.00.

Q. To reach 50,000 families?

A. Yes.

Q. By the way I don't know if we clarified it, but the figures shown on the exhibits, radio, newspaper and television exhibits,

that's numbers 29, 24 and 26. The number of 156,000 for example on number 26, are those families or persons?

A. Those are persons over 12.

Q. What about on the newspaper one?

A. That would be families.

[151] Q. The 70,000 figure for the Decatur-DeKalb News would be 70,964 separate families?

A. Yes.

Q. When you said you distributed the handbills for $3,500.00 to 50,000 you meant 50,000 separate households?

A. I'm sorry, can we shut that door? I keep getting—

Q. You said recently you sent out a mailing of $50,000. It was 50,000 separate households for a cost of $3,500.00?

A. Yes.

Q. By the way, was that rate lower or higher in 1971, as far as you know?

A. In 1971 it would have been lower.

Q. Another means you indicated—

A. Could I inject one thing? In that rate I have just given you is also the printing document.

Q. That would be all the printing and—

A. That would take the whole package.

Q. I see. You also indicated that on occasion you used handouts.

A. Yes.

Q. Could you tell us what you used those for and how you have used them?

A. That is done strictly as an institutional type thing. We offered a listing of the local fire department, the local Police Department, Ambulance Service, the shopping center. and [152] each resident in the shopping center, showing his phone number. And we would go to a high density area for population, such as an apartment complex, and we would offer this to everyone who lived in the apartment complex. Then we would

give it to the resident manager, and when someone moved in they would offer it to whoever moved into the apartment.

Q. Do you have the cost of a typical type distribution like that of handouts that you have engaged in?

A. I think the last one ran around $1,000.00.

Q. How many different circulars did you hand out, how many families did you reach?

A. 3,000, I think .

Q. Finally, the last source that you mentioned for advertising with billboards. What type billboards have you used?

A. We have used two billboard programs, one in conjunction with two other regional shopping centers, and there we bought again what is called a package, which consisted of, I think, 70 billboards, if my memory serves me. And they were located all over the metropolitan Atlanta area, so that the billboard was never in the same place for long. It continually moved. We promoted the shopping center in that way. I think that program cost, our share was $750.00.

Q. There were two other centers?

A. Two other shopping centers picked up a proportionate share. We are currently using one billboard on the Perimeter, [153] which is a superhighway. The sign is preceding the exit to our shopping center, and we just use that as institutional to show our theme which is "Good Old Fashioned Hospitality", and also promote our big anchor store, which is Rich's, which is the big retail store in Atlanta, Georgia, which our competitor up the road does not have.

Q. Now, in addition to the—

Judge Ricci: How long does a big sign advertising a shopping center, when it goes on a billboard, how long does it stay on that one billboard?

The Witness: It depends on the plan you have got.

Judge Ricci: I mean, your general experience. I doubt anyone would go to the trouble of putting up a big sign on a billboard and take it down the next day.

The Witness: The one we have now we get two panes a year, and it runs for six months.

Judge Ricci: In other words, generally when a big sign is put up on a billboard to advertise a shopping center it will stay up there about six months?

The Witness: Right.

Judge Ricci: Is the argument of the company in this case that the Union could have put up a sign instead of these pickets for six months on a bill board?

Mr. Cohen: You Honor, I have personally seen signs that unions have put up to promote their unions, I have heard radio [154] advertisements that the Retail Clerks and other unions have put out, I have seen television broadcasts, and I think any of these devices that I mentioned would have been available, some are obviously more available then others. But I am attempting to show that there is a variety of media available and what the cost of that media is.

Mr. Halter, you described the major sources of media used by the North DeKalb Shopping Center. Have you advertised in any other ways, without getting into details, just describe some you or other centers which are your clients?

The Witness: Yes. In the shopping center promotion business we have run again the gauntlet, we have run an airplane over the Atlanta Stadium during a Falcons football game carrying a banner to shop at North DeKalb Mall which reached 56,000 people, that's how many people were at the Stadium. We have flown Santa Claus in in a helicopter, we have a 4th of July fireworks show which is nothing but public relations because it is after the center is closed. It certainly does not draw a shopper, it just draws a man who sits in his car and watches the show, but we feel it is a community oriented type thing which helps our image. And one center here brought Santa Claus in in a hot air balloon. So it's as wide as the imagination as to what else you can do. We did glass reclamation in the parking lot, which was another thing that didn't have anything to do with the shopper.

You just brought your [155] glass and threw it away and we took care of it from there.

Q. (By Mr. Cohen): What was the reason for doing that?

A. Strictly goodwill, strictly promotion within the community.

Q. Did you hold promotions to draw people to the center at all?

A. Very definitely.

Q. How do you describe a promotion, how would you describe the type event you would hold on the shopping center itself? Mention several things.

A. There are a variety of things, we have some that are strictly public service oriented. Each year we have the DeKalb County school system science fair that is strictly an expense but strictly for image purposes. We really don't gain shoppers out of that. Then we have promotions that do gain shoppers, such as the Antique Fair which we have just concluded, which filled the mall to capacity, you could hardly walk in the mall. Some of these we go out and do. The public service things we will work with the school system coordinating this, go through the expense of advertising it, the whole bit, it's a public service. On the other hand, there are some promotions where the promotion will come to us. We will screen it, see if it can be done, see if we co-op the advertising with the promoter or whether we do it ourselves, and then we take it to the Board of Directors, they approve it, tell us when to have [156] it, and we put it on.

Q. In each of these cases that you have mentioned, was there an arrangement made with the people holding it as far as security, insurance, maintenance and so on?

A. Exactly. If it involves a potential or a real customer in the mall participating in the event, then they have to carry liability, although the individual stores as does Scott Hudgens Company have insurance on the shoppers. Security indicates, of the Antique Show, it was necessary for us to increase security because these people left their antiques on the mall, so we had

the expense of adding security to what is already—or to the security staff that already exists.

Judge Ricci: They paid for this additional cost?

The Witness: Yes.

Mr. Cohen: Has the North DeKalb Shopping Center ever advertised or promoted by means of having someone march up and down with a placard or picketing?

The Witness: No, sir.

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[157] Mr. Cohen: You indicated that the North DeKalb Shopping Center has never advertised by having someone march up and down holding a placard saying go to North DeKalb Shopping Center, or something else. My question is, why hasn't that device been used, you have used all these other devices.

The Witness: Well, one reason is I just indicated we spend a fortune, approximately $50,000 a year to create an image. We don't feel that would be conducive to our image. Second of all, for the advertising money spent we would only be reaching the people on the mall who are already there, that would not help us increase our traffic. So what we do is go [158] outside of this means to try to reach people who are not already at the shopping center.

Judge Ricci: When you said it was not consistent with the image you tried to create, would a paraphrase of what you said simply be very briefly, to have a picket walk up and down in such an elegant place would not look nice?

The Witness: No, not necessarily.

Judge Ricci: Is that a fair paraphrase of what you said before?

The Witness: Not necessarily.

Judge Ricci: Tell us what you mean by it would not enhance an image.

The Witness: Well, as I indicated some time back, our image right now is good old hospitality. What we have tried to do is produce through advertising and through cooperation with the

merchants an atmosphere of relaxed shopping pleasure. And we feel like the addition of people on the mall carrying signs would interfere with traffic and access and egress into shops and/or the center. And basically, it would relate back to dollars again, that is just not a good expense of money, you can do so much more with people that are not already there. Our purpose is not to reach the people who are shopping, our purpose is to reach the people who are not shopping.

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[160] Judge Ricci: No. Do you think that picketing with a sign up and down is a more efficient, economical way to advertise than all these wonderful ways you have been telling us?

The Witness: I would depend, of course, on how much money you had to spend.

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[162] Mr. Cohen: I will ask the witness one more question and then I am done for the day.

Again, I would ask you the question that I posed before, if I wanted to publicize a dispute at eight or nine locations in the Atlanta area, and wanted to hire people to engage in picketing in the month of January at retail store locations, how would that means of publicizing my disagreement compare [163] with using one of the other media that you have testified to? Either efficiency, economy or otherwise.

The Witness: Again, can you tell me how much money you are talking about?

Q. (By Mr. Cohen): I am saying I'm going to pay four people at nine locations for five days, pay $400.00 or $500.00 or $1,000.00 to do that.

Mr. Mascotti: Are you asking him which is cheaper?

Mr. Cohen: I'm asking him would that be an efficient use of my money to publicize the dispute.

Mr. Mascotti: I object.

Judge Ricci: It's an opinion. It depends on so many variables that I would consider his answer meaningless, but if Mr. Cohen thinks it should be in the record, how do you answer it?

Mr. Cohen: I want it in the record.

The Witness: I would think it would be an inefficient way to spend your money.

Q. (By Mr. Cohen): Why is that?

A. Well, let's take the period for one thing. January is, not just in Atlanta but in the country, a very slow retail period simply because most people are recovering from Christmas or December, which is the peak. After the peak, obviously you are going to have the valley, and that is January and February. So you have a very low traffic count and I assume you want to [164] get your message across to who could read the sign. There is no hig' intensity of traffic at that period, you are going to get your message across to very few people. You could take that same amount of money, the figures now escape me, they are here in the evidence, you could take that same amount of money, buy a half-page or two half-page ads if you are talking about $1,000.00 in Decatur-DeKalb News and reach 70,000 people twice, that would be 140,000 people. One thing as an advertising man I would say is you can tell a story and advertise it, but it is difficult to tell a story on a placard, to efficiently deliver your message.

Judge Ricci: You would be amazed. You would be amazed how a placard with two words on it tells a more precise story than three pages in a newspaper.

Mr. Cohen: Mr. Ricci, I object to that comment.

Judge Ricci: Of course you do.

The Witness: Could I reply to his comment?

Judge Ricci: Yes, sir, you may.

The Witness: I would consider the area of the country you would be living in.

Judge Ricci: And you are right, sir.

Do you have any other—Did you finish your answer to the question?

The Witness: Another thing I would say is that you could take that $1,000.00 and buy one of these total audience plans on the radio station, either AM, FM or both, on WSB, with a [165] total market area that is far outside of Atlanta. Let's say whoever you are having the argument with has stores outside the metropolitan Atlanta area, but you were not really concerned with them, you were concerned with the ones here. You could still deliver the message to a greater market area on TV or radio by buying one of these total audience plans for $1,000.00 or $1,200.00, it depends on the amount of money you have got to spend. At cost per thousand you can do a much better job in newspaper, radio or TV.

Mr. Cohen: I have no further questions.

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[167] *Redirect Examination*

Q. (By Mr. Cohen): To your knowledge, Mr. Halter, have unions gone to other advertising agencies and utilized media to communicate messages, as well as engaged in picketing?

A. Yes.

Q. That would include radio, television, newspaper and otherwise?

A. Yes.

Q. In the current Atlanta area?

A. Yes.

Judge Ricci: Thank you.

Mr. Mascotti: Wait a minute. To his knowledge?

Judge Ricci: He said he heard that unions had gone to other advertising agencies.

Mr. Mascotti: He says he knows that, it's a fact.

Judge Ricci: He heard that.

Recross Examination

Q. (By Mr. Mascotti): You heard that or you know that is a fact? Do you know that as a fact, that unions went to other advertising—

Mr. Cohen: That was not the question. I asked if unions used other media to his knowledge.

Judge Ricci: Oh, have unions advertised labor disputes by means other than picketing?

Mr. Cohen: That's correct.

[168] Judge Ricci: Your answer is yes?

The Witness: Yes.

Judge Ricci: We all know that. Okay, thank you.

(Witness excused.)

Mr. Cohen: I have no further witnesses.

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[170] Mr. Cohen: I just want to make one statement, Mr. Examiner. I intend to tell General Counsel this because it was not contained in our other documents. We filed, of course, statements of position with the Board. I will incorporate those in my brief to you, but there is one, the Nichols case that I mentioned earlier, came out after those cases came out. I think it is the only opinion I have seen of the Board which deals with Board law on shopping center picketing.

Judge Ricci: Is that 82 LLRM?

Mr. Cohen: 200 NLRB No. 161.

Judge Ricci: Joe Nachman.

Mr. Cohen: Joe Nachman, that's correct. I think that is a significant case, I want General Counsel to be aware of it.

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